

96
No. 2728

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation,

Appellee.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owners and insurers of said cargo,

Appellee.

APOSTLES ON APPEAL (In Five Volumes)

(Vol. 4—Pages 913 to 1216)

From the United States District Court for the Western District of Washington, Southern Division.

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F. D. Monckton,
Clark

Testimony of HENRY TRIPPENSE:

speed ahead all the way along, and you cannot keep any count of that.

Q. After you cleared from the vessel?

A. There are all the bells when we cleared away.

Q. Here is 8:58 and 10 o'clock?

A. We were going very slow then.

Q. You came into Tacoma very slowly after the collision? A. Yes, sir.

Q. And did not keep any record of the revolutions at all? A. No, sir.

Q. Your log book shows you came into collision at 7:58, and that you went full speed astern at 7:58?

A. Yes, sir.

Q. That was the entry you made from the information you received at the time from the book, from that small book? A. Yes, sir.

Q. And at that time you did not know there was anything wrong with this entry?

A. I entered that from the small book when it came up out of the engine room.

Q. And you thought it was all right?

A. I had to take it out of the book. I always take out,—I cannot do anything else but to put it down.

Q. You would not put it down if it was wrong, would you?

A. Well, I tell you I never saw anything wrong in that book, and I didn't ask any questions, and I put it down the way it came up on the book.

Q. Were you on this vessel when Captain Green joined her? A. Yes, sir.

Q. This is a twin-screw vessel isn't it? A. Yes.

Q. Have you ever observed in what distance this vessel could turn? A. No, sir.

Q. She can turn very sharply, couldn't she?

A. That depends on what we do with her.

Q. When she is light, with no more than two thousand tons? A. Yes, sir.

Q. Can she turn rapidly then?

A. Well, very rapidly, with one engine going ahead and one astern.

Q. And in what distance would it require her to turn?

A. I do not know what distance, I couldn't tell you within half a mile.

Q. Captain Green thought it would take five minutes when this vessel were loaded, to stop her headway, do you think that is about right?

A. Well I guess I could do it quicker than that.

Q. And bring her to a standstill? A. Yes, sir.

Q. I see there is an entry here in this engineer's log book, the large one, that the starboard block was out of order? A. After the collision?

A. That broke during the collision?

A. After the collision.

Q. Did it break during the collision? A. No, sir.

Q. What broke it after the collision?

A. I don't know.

Q. How long after?

A. It was not broken; it just got caught.

Q. How long after the collision did you discover it?

A. Just after 8:09.

Q. Had it been catching before?

A. Not that we knew.

Q. You say you came out of the alleyway and went out on the deck? A. Yes, sir.

Q. Did you see anything when you got on deck?

A. No, sir.

Q. You did not see anything ahead of you at all?

A. I couldn't see ahead.

Q. And you went down below?

A. No, I stood around the engine room platform.

Q. You went back into the engine room?

A. Yes, sir.

Q. How long did you remain on deck?

A. I cannot tell that; it might be two minutes or three.

Q. You came out on the starboard side of the ship?

A. Yes, sir.

Q. You were on the starboard side on the ship?

A. Yes, sir.

Q. And you may have remained out two minutes?

A. Might; I could not recollect the time right, how long I stayed out there.

MR. HAYDEN: I want to introduce both this log, the scrap log referring to the collision on the 12th.

WHEREUPON said books were marked libelant's S & T, respectively.

Q. You are not sure the ship was stopped when the collision occurred?

A. I could not be sure of that; I could not look in the water.

Q. Your engines were still running astern at the time of the collision? A. Yes, sir.

Q. And they ran astern how long after that?

A. That was in the book. I cannot give any time, I might guess about a minute and a half or something like that a minute and three-quarters, on a guess.

Q. You say it is in the book here? A. Yes.

Q. If you stopped and backed full speed astern for a minutes how far would you travel?

A. I couldn't tell you that.

Q. You haven't any idea? A. I have no idea.

Q. Doesn't the signal from the bridge indicate whether you are to go full speed astern or not?

A. The telegraph would indicate full speed astern.

Q. What do you do when your engineer gets telegraph, full speed astern, does he open her all the way out?

A. If it says full speed, he would open her all the way out, yes.

Q. You don't know whether he got telegraph to go full speed astern or not?

A. No, sir, I could not see that.

Q. Can you tell whether after receiving the signal to stop, from where you were standing, the signal was to go astern or ahead? A. Yes, sir.

Q. You could tell that by the movement of your engine?

A. By the movement of the engine, yes, sir.

Q. And you could tell whether she was open ful' out, by the movement of the engine?

A. No, sir, I could not see that.

Q. Why was it necessary for you to give the engi-

neer the signal to go full speed astern, when he had already received one from the deck?

A. That is what he would have to stand by; that something has occurred; sometimes he cannot hear the whistles from the other ship.

Q. The four whistles from the other ship occurred quite a little while before your three whistles?

A. No, the three whistles were right after that.

Q. Immediately after?

A. It may have been a second or so.

Q. There was some little time elapsed?

A. I heard the four whistles and the three whistles right on top of that.

Q. And then how long was it before the collision, after that?

A. I could not say, because I looked down in the engine room and then came out of the engine room, walked through the ally, came out on the deck and went aft, and then the collision occurred.

Q. It occurred when you were on the deck?

A. Yes, when I was on deck.

Q. And you could not see anything ahead of you at all?

A. No, sir; I came out and everything was dark.

Q. And you stayed outside for two minutes?

A. Not quite, but around there.

Q. And your eyes would not adjust themselves in that time?

A. No, sir, because it is all light around where we are, even on deck it is light.

Q. So you were reversing for two minutes?

A. I did not mention any time; that is, I thought it was over a minute. That is what what I say, around there. I did not mention any time, but that is the time in the book, and that is what I go by.

Q. You heard the whistles blow before you got the signal to stop, did you?

A. Yes, sir,—hold on,—there are three bells; there is one stop bell, one coming astern, and one stop. Which stop do you mean, the first one?

Q. Yes, the first one?

A. We were stopped before the whistles were given; we were going astern when the four whistles sounded.

Q. Did you hear any other whistles except those four; that is any passing whistles?

A. No, sir.

Q. You were walking in the same place?

A. I was walking in the same place, yes, sir.

Q. Did you hear the Flyer whistle when she went by you?

A. I cannot recollect that at all.

REDIRECT EXAMINATION.

(BY MR. HUGHES.)

Q. Do your oilers in keeping the engine bell book from which you make up your engineer's log, note fractions of a minute? A. No, sir.

Q. What are they required to do in that respect?

A. They are required to take the minute hand.

Q. For instance I notice in this small book you have a record leaving Seattle, stop, 6:31, and then again half speed astern 6:31. Now, it would not occur at exactly the same time? A. No, but it is in that minute.

Q. And the next is full speed astern, 6:32?

A. Yes.

Q. If the full speed bell had occurred between the minute 6:32, how would it be recorded?

A. The same as it is recorded.

Q. If it occurred before that time; you have two of them recorded 6:31, and if the full speed astern bell had been given before the minute hand reached 32 how would it be recorded?

A. It would be recorded the same.

Q. The same as preceding? A. Yes, sir.

Q. And in making up your log, you do not attempt to get at the fractions of a minute? A. No, sir.

Q. But you recorded it just as it is given in the oiler's book? A. Yes, sir.

Q. That is kept in the engine room? A. Yes, sir.

Q. And that is what you did here, simply transcribed into your log the memoranda that you found in the bell book of the engine room?

A. Yes, sir, in the bell book.

Q. Except that you computed the actual revolutions and put them down?

A. Yes, I do that every 24 hours. You can go right back.

(BY MR. HAYDEN.)

Q. Do you mean to say that if a bell was given at three seconds to 6:31 you would record it as 6:30?

A. No; I don't say that, three seconds; we look at the minute hand and if it is closer to the minute that is ahead of it, we take that minute, if the minute hand is closer to it, and if it is closer to the other we take the first one. It might be that it is 7:40; 7:35 seconds, he would take that seven and the minute to it, one minute to seven, 1:40; 1:45; he did not look at the second hand at all, but only at the minute hand.

Q. Then if the minute hand were half way between 7:57 and 7:58, he would record that how?

A. He would record that 7:58.

Q. And if it were quarter way he would record it 7:57? A. Which way?

Q. Beyond the 7:57?

A. He would record that 7:57, if it is a quarter minute past the 57.

(BY MR. HUGHES.)

Q. If it is half a minute how would he record it?

A. The same way.

Q. As a matter of fact does not the man record it the minute until the next minute has practically been reached?

MR. HAYDEN: That is objected to as leading and suggestive, and cross examination of his own witness.

A. Practically; that is what I say, when he is close. Here is the man what takes the time, and he takes the time according to the minute hand.

(Witness excused.)

JULIUS SCHRAG, a witness called and sworn in behalf of the respondent, and claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

(BY MR. HUGHES.)

Q. Your name. A. Julius Schrag.

Q. What is your business? A. Oiler.

Q. On the Virginian? A. Yes, sir.

Q. How long have you been on the Virginian?

A. Nine months.

Q. How long a time did you go into this engine room before this collision occurred?

A. Fifteen minutes.

Q. You are required to report on duty how long before the other watch expires? A. Fifteen minutes.

Q. You went there at what time?

A. Quarter to eight.

Q. You were in the engine room up to the time of the collision were you? A. Yes, sir.

Q. Did you make the notes in this bill book as to the stopping and reversing of the engine?

A. Yes, sir, I did.

Q. Tell just how you came to do it and what you did?

A. At 7:57, or somewhere near, I don't know which, it may have been a half minute before, or three-quarters of a minute before 7:57, we got a stop bell.

Q. How did you come to make the entry?

A. I was standing underneath the ventilator, after I got through looking over the engine.

Q. Now you are required to be there so that you can look over the engine and see what condition everything is in before your time begins?

A. Yes, sir.

Q. You had done that? A. Yes, sir.

Q. And you were standing there when the bell came?

A. Yes, sir, under the ventilator.

Q. Is that in the forward part of the engine room?

A. Yes.

Q. Where is the log book?

A. It is right on the desk about twenty feet from the ventilator.

Q. You walked from where you were standing?

A. Yes, sir.

Q. Did the bell ring both starboard and port side?
A. Yes, sir.

Q. Did the two oilers have to answer that register?
A. Yes, sir.

Q. Did they do that?

A. Yes, they answered right away.

Q. How did you come to make the note in the book?

A. I went over to the desk and got the book and went back and took the time on the clock and marked it down.

Q. Then you walked across to the desk and picked it up? A. Yes, sir.

Q. Then what do you mean when you say you came back and took the time; where was the clock?

A. The clock is seven or eight feet back from the desk where the book is.

Q. Back towards the center of the engine?

A. Towards the forward.

Q. Is it suspended on the cross beam. A. Yes, sir.

Q. The clock is on the opposite side from the desk on which the log was laying. A. Yes, sir.

MR. HAYDEN: We object to this as leading.

A. Not on the opposite, about eight feet back from the desk.

Q. Eight feet back towards the ventilator?

A. Yes, sir, towards the ventilator where I was standing.

Q. Which side of the cross beam did the clock face?

A. Right in the center of the beam.

Q. Which way did face, towards the ventilator or the desk? A. Towards the ventilator.

Q. Did you have to sit back of it toward the ventilator to see the clock? A. Yes, sir.

Q. Then what did you do?

A. I went over to the desk, got the book and stepped back and took the time and marked it down.

Q. Now in taking that time, what can you say as to what the actual time was, so far as seconds are concerned?

A. I could not say how many seconds it took to get the book; I would judge about 35 seconds or forty.

Q. You recorded it as 7:57? A. Yes, sir.

Q. I want to know whether as a matter of fact you took any note as to what the second hand of the clock showed, or how did you get the time at 7:57?

A. I just took the time by the minute hand; which ever minute the minute hand was closer.

Q. How did you put the book back on the deck, or what did you do?

A. I put the bell book back in the desk and stood around the ventilator again.

Q. Did you observe another signal? A. Yes, sir.

Q. Could you tell what it was from the register?

A. Yes, sir. I looked at it, went and took the book again and walked back to the same place to get the time, and entered it in the book.

Q. You entered that as 7:58? A. Yes, sir.

Q. Can you say it was exactly a minute; the time that you entered the first one in this book to the time you entered the second?

A. I could not say whether it was exactly a minute; it might have been a minute and a half or a minute and forty-five seconds.

Q. Do you remember what you did with the log after that? A. I put it back on the desk.

Q. Did you get another signal?

A. We got another signal afterwards.

Q. What was that; was it a stop signal or what?

A. The last signal was a stop.

Q. Now did you record it as 7:59,—see here (indicating)? A. Yes, sir.

Q. That was a signal to stop the engine?

A. To stop the engines.

Q. Had you heard or noticed the shock of collision?

A. I had noticed quite a little shock.

Q. You felt a shock? A. Yes, sir.

Q. Did this occur; how quickly after the shock did you have this signal to stop the engine?

A. That I could not say exactly, how long it was.

Q. Did it appear to be quick or not?

A. Not very long after.

Q. Do you know what you had done, where you were, when that signal came?

A. I was standing in the same place, between the ventilator and the desk.

Q. What did you do?

A. I went back and got the book, stepped back to the clock and took the time and noted it down in the book.

Q. You recorded it as 7:59; can you tell whether it was a half a second or more or less?

A. No, sir, we never take seconds after the half minute; we always take on the minute.

Q. So that, are you able to say whether the time 7:59 is within 30 or 40 seconds of the exact position of the second hand of that clock?

MR. HAYDEN: That is objected to as leading and suggestive.

A. I can't tell by looking at the minute hand.

Q. But you are now able to say whether the time was actually 7:59 or whether it may have varied from that, and if so how much?

MR. HAYDEN: We make the same objection, as being leading and suggestive.

A. I could not tell how much it was.

Q. How much might it have varied?

MR. HAYDEN: Same objection.

A. It might have varied thirty seconds, or forty-five seconds.

RE-CROSS-EXAMINATION.

(BY MR. HAYDEN.)

Q. How far was this desk on which this small book was placed, from the ventilator? A. About 20 feet.

Q. And how far was the desk from the clock?

A. About 7 or 8 feet.

Q. Was the clock between the desk and the ventilator? A. Yes, sir.

Q. Was the clock facing the ventilator or the desk?

A. Facing the ventilator.

Q. When you heard the signal did you look first at the clock as you went to get your book?

A. No, sir, I got the book first and went back to the clock, and took the time and marked it down in the book.

Q. You did that after the first signal to stop was given you? A. Yes, sir.

Q. At 7:57? A. Yes, sir, after the first signal.

Q. And you did it after the signal to full speed astern was given you at 7:58?

A. I threw the book back the same way.

Q. But you walked from the ventilator to the book, got your book and went back and looked at the clock after you heard the full speed astern signal?

A. Yes, sir.

Q. So you placed the book back again on the desk after the full speed astern signal, walked back under the ventilator and remained there until you got the stop signal, and then walked up and got your book, came back and looked at the clock and put it down in your book; is that right? A. Yes, sir.

Q. How long did you remain under the ventilator between these signals?

A. I could not tell how long.

Q. Was it some little time after?

A. I would judge about a minute or a minute and a half.

Q. Between the signals? A. Between the signals.

Q. You think you remained under the ventilator a minute or a minute and a half between the signals?

A. I could not say exactly.

Q. You think it was something in that neighborhood?

A. It might have been less; that might have been half a minute or only 15 seconds.

Q. Then you don't remember at all how long you remained under the ventilator?

A. No, sir, not exactly.

Q. Suppose you took about the same length of time to walk from the ventilator to the desk and back again to look at the clock between each of the signals, did you?

A. Well, I would say I did take about the same time.

Q. When you got the signal to stop at 7:57 as you have recorded here, that signal may have been given anywhere between 7:57 and 7:57 $\frac{1}{2}$, as I understand you? A. Yes, sir.

Q. And had it come between 7:57 $\frac{1}{2}$ and 7:58 you would have put it down at 7:58? A. No, at 7:57.

Q. Then you did not record it the same way the chief did?

A. Well, I don't know; I am doing the recording down there.

Q. And then this signal to stop at 7:57, according to your recollection, might have been given at 7:57 and three-quarters?

A. It might have been given at that time, or it might have been given before.

Q. Now when you put down that the collision occurred at 7:58, you mean that it occurred at the same time that you got your signal to reverse?

MR. HUGHES: I object to that as not cross-examination, and also misleading.

Q. Was there any book kept down there of these engines? A. Not for the bells.

Q. There was no other book kept down there?

A. No, sir; that is the only book down there that I have seen.

Q. Did you ever enter in any book the time of the collision? A. In the book there.

Q. Where is that? A. At 7:58.

Q. And how did you indicate that?

A. Here is the sign of it.

Q. What is the sign? A. Full speed astern.

Q. And that is the sign?

A. It is not a sign of the collision, but the sign that the engine had to go full speed astern, whether it is a collision or not.

Q. When did you enter in here that the collision occurred at 7:58, being the time the collision occurred, —you gave that entry to the chief?

A. No, I didn't give any entry at all; I marked down the bell, that is down here.

Q. Seven fifty-eight you say is the time that the collision occurred?

A. That is when we got the full speed astern bell.

Q. And that is the time the collision occurred?

A. No, sir, I don't say it is.

Q. That is what the log book says?

A. Well I didn't say that; it is not taken from here. What I did was to mark down what is in the book.

Q. In this small book marked Libelant's Exhibit D, you said a minute ago that the character M indicated when the collision occurred?

A. It indicates full speed astern.

Q. Then you want to change your statement that the character M indicated when the collision occurred?

MR. HUGHES: That is objected to as improper and misleading, and not proper cross-examination.

A. What statement?

(Question read.)

MR. HUGHES: I object to this as showing an evident purpose to wilfully entrap and mislead the witness.

MR. HAYDEN: Please read the question again.

(Question read.)

A. That character M does not indicate that the collision occurred at that time, but that the engines were full speed astern.

Q. You said in answer to my question that you had made in this book an entry when the collision occurred; what did you mean by that?

A. That I had down the time when the collision occurred; I haven't given that time, but when the bells came from the bridge; that is all I got down there.

Q. Will you, Mr. Stenographer, read the answer to the question where he says he entered in the book the time that the collision occurred?

(Testimony read.)

Q. What book did you enter in the time of the collision?

A. I did not enter in the time of the collision.

Q. Did you make any mark anywhere to indicate the time of the collision? A. No, sir.

Q. You did not? A. Yes, sir.

Q. You say you felt the jar of the collision?

A. A little bit, yes, sir.

Q. That occurred at 7:58 did it?

A. I do not know whether it was exactly 7:58 or 7:58½ or ¾ths.

Q. You haven't any recollection then of the exact time when it occurred? A. No.

Q. After you felt the jar of the collision; where

were you standing at the time you felt the jar of the collision?

A. At a couple of feet from the ventilator.

Q. Were you taking the time then?

A. I was taking the time when the bell came.

Q. Were you taking the time when you felt the collision? A. No, sir.

Q. Did you have that book in your hand?

A. No, sir.

Q. Had you put it back on the desk? A. Yes, sir.

Q. And were walking back to the ventilator?

A. Yes, sir.

RE-DIRECT EXAMINATION.

(BY MR. HUGHES.)

Q. Where were you when the collision occurred, do you remember?

A. Between the ventilator and the desk.

Q. Were you standing or walking, do you remember? A. I was walking around there.

Q. Have you any recollection how long it was after you had recorded the previous record in that way, in the bell book, or what you had been doing in the meantime?

A. I was standing there waiting for more bells to come.

(BY MR. HAYDEN.)

Q. This collision occurred before your regular time of going on that day? A. Yes.

Q. Where was the other oiler?

A. Down below with me.

Q. Why didn't he take the signals?

A. It is always the man who is nearest or handiest to take it.

Q. You were the nearest or handiest?

A. Yes, sir.

Q. Where was the other?

A. We were all standing around there.

Q. You and he were right together?

A. Pretty near all together.

Q. Why didn't he take the signal?

A. Because I was there first.

Q. You got there ahead of him? A. Yes, sir.

Q. And who was working the engines ahead and astern? A. The engineers.

Q. What were their names?

A. The first assistant and third assistant.

Q. Do you know their names?

A. Mr. Brett and Simpson.

Q. Are they aboard the vessel now? A. Yes, sir.
(Witness excused.)

Whereupon an adjournment was taken until 7:30

P. M.

7:30 P. M. Tuesday, March 19, 1912.

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective attorneys, that depositions may be taken in behalf of the respective parties before Earl E. Richards, a Notary Public, at room 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m. on September 20, 1912, and may be transcribed and read in evidence in behalf of the respective parties with the same effect as though said depositions had been taken before the United States Commissioner to whom the taking of testimony in this cause was referred.

The signatures of the witnesses to the testimony as transcribed are hereby waived, and all other objections as to the time and manner of taking these depositions are hereby waived.

HUFFER, HAYDEN & HAMILTON,
Proctor for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Respondent, Claimant and Cross-Libelant.

BALLINGER, BATTLE, HULBURT & SHORTS,
PAGE, McCUTCHEON, KNIGHT & OLNEY,

Proctors for Cargo.

DEPOSITIONS.

(Of Alfred Edward Draper et al.)

BE IT REMEMBERED, that on September 20, 1912, at room No. 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m., before me, Earl E. Richards, a Notary Public in and for the state of Washington, appeared Mr. W. H. Hayden (of Messrs. Huffer,

Hayden & Hamilton), proctor for libelant, Mr. W. H. Bogle and Mr. Lawrence Bogle (of Messrs. Bogle, Graves, Merritt & Bogle), proctors for respondent, claimant and cross-libelant;

WHEREUPON the following proceedings were had:

ALFRED EDWARD DRAPER, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name, Mr. Draper? A. Alfred Edward Draper.

Q. What is your business?

A. Steamboat pilot, I suppose.

Q. Have you a master's license?

A. Pilot's license.

Q. How long have you held that license, Mr. Draper? A. Six years.

Q. How long have you been following steamboating? A. Oh, possibly ten years.

Q. What waters does your pilot's license cover?

A. Puget Sound and adjacent inland waters.

Q. What boat are you on at the present time?

A. Called the "Salmora".

Q. What is her run?

A. From Tacoma to Anacortes.

Q. What size boat is she?

A. She is 75 feet in length, I think, and 30 tons.

Q. You are master of the "Salmora"?

A. Yes sir, master of the "Salmora".

Q. Were you master of that boat in January of this year? A. I was.

Q. On the night of January 12th, what run were you making?

A. I was coming from Tacoma to Seattle.

Q. What time did you leave Tacoma?

A. About seven o'clock.

Q. What time did you pass Point Robinson on that night? A. At 7:55 p. m.

Q. Did you pass or see the steamers "Virginian" and "Strathalbyn" on the night of January 12th?

A. Yes sir, about a little over fifteen minutes run from Point Robinson I passed them.

Q. At the time you passed them, will you describe the position of the two vessels as near as you could tell?

A. I passed between the steamers. The "Strathalbyn" was lying ahead of the "Virginian", in a somewhat west of south, I believe.

Q. West of south?

A. West of south was her approximate position, and she was heading in a southeasterly direction. The "Virginian" was—I passed leaving to the starboard and she was heading in somewhat the same direction.

Q. You mean to say that the two vessels as you passed between them were approximately—

A. (Interrupting) Laying on parallel courses, possibly 200 yards apart or more.

Q. Could you tell, captain, what course by the compass the "Virginian" was lying on the time you passed her?

A. She must have been heading nearly southeast. I was heading about northwest after I changed my course.

Q. About how far from Pully Point were the two vessels? A. Something over a mile, I believe.

A. North or south? A. South.

Q. Was the "Virginian" moving at all when you passed her? A. I don't think she was.

Q. Was the "Strathalbyn" moving at all?

A. Slightly, if I remember right.

Q. Captain, did you see any lights on either of those two vessels as you approached them?

A. Yes, I could see the "Virginian's" head and range light very bright and clear, and also saw her green light, which was plain.

Q. Those lights were on the "Virginian"?

A. On the "Virginian", yes.

Q. What lights did you see on the "Strathalbyn", if any?

A. The only light that I saw on the "Strathalbyn", or lights, was her port light, which I saw when I was approximately a quarter of a mile away from her, and

what I took for a headlight when I was possibly abreast of her foremast.

Q. This light you took to be her headlight was a white light? A. Well, yes.

Q. How far away were you from the "Strathalbyn" before you saw this white light?

A. Not over 150 yards.

Q. So that the first light you saw on the "Strathalbyn" was when you were approximately a quarter of a mile away; is that true? A. Yes.

Q. That is the first light you had seen?

A. That is the first light I saw outside of these two high white lights.

Q. Well, those lights—

A. (Interrupting) Were on the "Virginian", yes.

Q. (Continuing)—were on the "Virginian". What kind of lights were these lights on the "Strathalbyn", were they oil lights or electric lights, could you tell?

MR. HAYDEN: I object unless he knows.

MR. BOGLE: That is what I am asking him.

Q. (Mr. Lawrence Bogle) Could you tell whether they were—

A. (Interrupting) I know they were not electric lights.

Q. How do you know that?

A. Because they were not burning bright enough.

Q. What kind of lights would you say they were, captain?

A. I would say they were very very dim oil lights.

Q. How did they compare with the "Virginian's" lights? A. Very poorly.

Q. Captain, I will hand you a government chart and ask you to indicate to the best of your recollection the position of these two vessels as they were lying in the water at the time you passed between them?

A. Will I have to mark it on here?

Q. Yes.

A. (Witness marking) The "Virginian" was laying approximately in that position (marking) and the "Strathalbyn" was lying about like that.

Q. Well, just mark the "Virginian" with a "V" and the "Strathalbyn" with an "S."

A. (Witness does as requested.)

Q. They were both headed in which direction?

A. Why, in a general southeast.

Q. You might indicate with an arrow there the direction the two vessels were headed?

A. (Witness does as requested) Like that.

Q. Now, will you indicate on that chart the course that you took from Robinson Point up to and during the time, the position of your course between the two vessels?

A. The line that I have drawn there would nearly indicate my regular course, which is northwest half north to—

Q. (Interrupting) Now, wait a minute. This line which you have drawn and marked "Northwest half north"—

A. I passed closer to Point Robinson than that, though.

Q. I just want to get that approximate, as near as you can give it.

A. (Witness marks) That would be nearer my course. Now, after leaving Robinson I was steering northwest half north, but I hauled off to the starboard when I saw these high white lights.

Q. I see.

A. So that would throw me out—

Q. (Interrupting) Just indicate that on the chart, will you? A. All right.

Q. Show your course passing between the two vessels.

A. (Witness marks) Now, I hauled to starboard in order to pass this ship on the port hand.

Q. That is the "Virginian"?

A. Yes sir, the "Virginian", but I saw this about—oh, about—approximately about a quarter of a mile away I saw this red light begin to draw away from this range light—or head and range light and I knew then that it was two craft, and almost instantly after seeing the red light I saw the green light on the "Virginian". Then I changed my course to pass between them.

Q. Well, just indicate that course?

A. (Witness marks with pencil.)

Q. Just draw the position of the two vessels and

your course, the course you ran that night. Just use the ink instead of a pencil there.

A. (Witness traces pencil markings with black ink.)

MR. HAYDEN: I would like to request that the witnesses be separated.

The witnesses were here excluded from the court room.

Q. (Mr. W. H. Bogle) Mark the line you have drawn on the map indicating the course of your vessel with the letter "X".

A. (Witness does as requested.)

Q. (Mr. Lawrence Bogle) I think you had better indicate your course there with an arrow, showing the direction you were going?

A. (Witness does as requested.)

Q. (Mr. W. H. Bogle) Now the same on this one. (Indicating.)

A. (Witness does as requested.)

Q. What time, approximately, did you pass these two vessels?

A. About 8:17, I think it was, or nearly.

MR. LAWRENCE BOGLE: I want to offer this in evidence as Respondent's exhibit "5-1".

Map referred to was marked respondent's exhibit "5-1", same being attached hereto and returned here-with.

Q. (Mr. Hayden) I didn't understand your answer to the last question. A. About 8:17.

Q. (Mr. Hayden) That is, passed these vessels?

A. Let's see now. About that time.

Q. (Mr. Lawrence Bogle) Captain, when you saw that red light, could you tell what vessel it was on when you first— A. (Interrupting) No sir.

Q. Could you see anything to indicate the course of the vessel? A. No sir.

Q. You could not see her hull? A. No.

Q. Outline.

A. I could only tell that it was in proximity to these white lights that I saw.

Q. And you were then not more than a quarter of a mile away? A. About that, I think.

CROSS EXAMINATION.

Q. (Mr. Hayden) Where did you pass the "Flyer", Mr. Draper, on this night, about what point and about what position north or south of Robinson's Point?

A. I didn't quite get that question.

(Question read.)

A. I passed her shortly after I passed Robinson Point.

Q. At what time?

A. Why, about 8:05, I should say, as near as I can remember; something like that.

Q. That is according to your ship's time?

A. Yes, according to my time.

Q. And where was the "Flyer" then?

A. It was heading for Tacoma, heading south or southeast.

Q. About how far north of Robinson Point?

A. Oh, that would be between two and three miles.

Q. The "Flyer" was two or three miles north of Robinson's Point when you passed her? A. Yes.

Q. How far were the "Virginian" and the "Strathalbyn" from Robinson's Point at the time you passed the "Flyer"?

A. Let me see now. Well, they were approximately a mile, I think.

Q. (Mr. Lawrence Bogle) What is that, north of Robinson, did you say?

A. South—oh, north of Robinson.

Q. (Mr. Hayden) North of Robinson?

A. Oh, they would be possibly four miles.

Q. The "Virginian" and the "Strathalbyn" were probably four miles north of Robinson Point? A. Yes.

Q. At the time you passed the "Flyer"—is that what you mean to say?

A. I am not certain about the exact distance between Robinson and Three Tree or Pully.

Q. Well, let's get it this way: About what proportion of the distance?

A. Well, they were about two thirds.

Q. That is, the "Strathalbyn" and "Virginian" were about two thirds of the distance from Robinson's Point towards Pully Point?

A. That is as near as I can judge, yes sir.

Q. At the time you passed the "Flyer"?

A. Yes sir.

Q. Now, in approximating the distance proportionately between Robinson's Point and Pully Point, where did you pass the "Flyer"?

A. About one third of the distance.

Q. North of Robinson's Point? A. Yes.

Q. The "Flyer" was headed for Tacoma?

A. Yes sir.

Q. Where did you first see the "Virginian's" light when you were going towards Seattle?

A. When I was off Point Robinson.

Q. Before you got to the Point?

A. Oh, well, just a few seconds, yes.

Q. How close to the point do you usually navigate your vessel, or did you on this night, rather?

A. I was quite close that night.

Q. And where do you estimate the "Virginian" was when you first saw her lights?

A. Well, I knew that she was to the south of Three Tree Point or Pully.

Q. To the south of it?

A. Yes. Of course I could not tell how far.

Q. Where did the "Indianapolis" pass you?

A. Somewhere between Brown and Robinson.

Q. Did you notice the "Flyer" at the same time that you noticed the "Virginian's" lights as you were coming around Robinson? A. Yes sir.

Q. How did the "Flyer" maneuver that night?

A. When I saw her she was headed almost directly towards—I could see her—all of her running lights.

Q. Yes. Go ahead.

A. And she was somewhere in the vicinity of the "Virginian", or what I afterwards found to be the "Virginian".

Q. And then what did she do?

A. Well, then she headed toward Point Robinson—

Q. Yes, go ahead.

A. And I passed her about 8:10, something of that sort.

Q. Passed what about 8:10? A. The "Flyer".

Q. You passed the "Flyer" about 8:10, or the "Virginian" passed the "Flyer" about 8:10?

A. Let's see. No, I passed her about 8:05, I think it was.

Q. Yes.

A. I would not—

Q. (Interrupting) Well, what did the "Flyer" do from the time you saw her down at Pully Point, what maneuvers did she perform?

MR. LAWRENCE BOGLE: We object to all this testimony about the "Flyer" as being immaterial and not proper cross examination.

Q. (Mr. Hayden) Answer.

A. I could not see her perform any maneuvers; she simply was laying or running in the vicinity of the "Virginian" and headed for Point Robinson on her way to Tacoma. I knew that she was late, because it was past her time.

Q. All the time you saw the "Flyer", then, she was on her regular course from the point, between Pully Point and Robinson Point, toward Tacoma?

A. Nearly so, yes sir.

Q. You didn't see these two vessels come together, did you? A. No sir.

Q. What is the speed of your boat, what speed was she making that night?

A. She makes approximately ten miles an hour.

Q. Was she doing that that night?

A. Nearly so. Possibly not that, because we had quite a load.

Q. What would you say would be her speed that night? A. She probably was doing nine.

Q. I presume the positions you put on the map there, of these boats, are approximate? A. Yes sir.

Q. The best you recollect at this time? A. Yes sir.

Q. You don't pretend that they are accurate, do you?

A. Why, no, I could not say that they were absolutely accurate, but then they are nearly in the position that they were when I passed.

Q. And as you were coming up from Robinson's

Point toward the vessels, their stern would be toward you, would it not—or would their bow be toward you?

A. Why, the bow was toward me, the bow of the "Virginian" I am absolutely certain of because I could see her lights.

Q. The bow of the "Virginian" was towards you?

A. Yes.

Q. You don't know whether the bow of the "Strathalbyn" was towards you or not at that time, do you?

A. No sir.

Q. About what was the proportionate distance between Robinson's Point and these two vessels when you first saw the red light, what was your proportionate distance between the point and the two vessels, were you nearer Robinson's Point or were you nearer the vessels?

A. Oh, I was nearer the vessels, certainly.

Q. And about how near, that is, proportionately, how near—I am getting at the proportion, because you state you don't know the distances between the points, and I want to get as near as I can what you consider the proportionate distances?

A. Well, I say that I was possibly a quarter of a mile away.

Q. Was it raining at the time you were coming from Robinson's Point toward the vessels? A. No sir.

Q. Was there any fog? A. No sir.

Q. Did you encounter any rain between Robinson's Point and Pully Point that night? A. No.

Q. Did you notice the "Indianapolis" in the vicinity of the "Virginian" at all? A. No, I did not.

Q. When you speak of the lights as being dim, that is a relative term, isn't it?

A. Well, a light ought to be bright enough to be seen at a distance of at least two miles.

Q. And of course the position of the vessel at the time would make a difference in whether you could see the light or not? A. True.

Q. And you didn't notice whether you could see these lights two miles off or not after you first picked them up?

A. Do you mean the lights of the "Virginian"?

Q. No, the "Strathalbyn".

A. Well, no, because I only saw the light when I was approximately only a quarter of a mile away, the first time that I—

Q. (Interrupting) But after that you didn't look to see whether you could see them two miles off or not?

A. No, because—

Q. (Interrupting) Did you know that there had been a collision at the time you passed—

MR. BOGLE: (Interrupting) He didn't quite finish his answer.

Q. (Mr. Hayden) Oh, I beg your pardon.

MR. BOGLE: He said "No, because—"

Q. (Mr. Hayden) What were you going to say?

A. I said because she was not in such a position that I could see the lights after I passed her.

Q. She had swung around and was coming up towards Robinson's Point, while you were going the other way? A. Yes sir.

Q. Did you notice, at the time you passed Robinson's Point, that there had been a collision? A. No sir.

Q. Did you know, at the time you passed the vessels, that there had been a collision? A. No sir.

Q. Did you notice anything strange about these vessels at that time?

A. I noticed that they were laying still—were lying still, they were not under way.

Q. And did that create any surmises or speculations in your mind at all? A. Yes.

Q. You didn't get close enough to the vessels to see them being damaged at all, though, if they had been damaged at all? A. No, no.

Q. You didn't see any action of the men aboard the vessels that would indicate that they had been damaged at all? A. No.

Q. Or that there had been a collision? A. No.

Q. Are you the gentlemen who volunteered and telephoned to Captain Duffy that you had seen this accident or seen this situation?

MR. LAWRENCE BOGLE: We object to that.

A. No sir.

Q. (Mr. Hayden) Was somebody else with you that telephoned to Captain Duffy that you two had been

there, before you came up to give your testimony before the inspectors?

A. I don't know; I have no knowledge of it.

Q. How long have you known Captain Duffy?

MR. LAWRENCE BOGLE: It is wholly immaterial.

A. How long have I known Captain Duffy? Oh, it is possibly a couple of years that I have known him, personally.

Q. You didn't have any difficulty in avoiding the "Strathalbyn" that night? A. Oh, no.

Q. How far did you make out her hull or the load of lumber on her before you reached her, how far away were you from her when you first made it out?

A. Oh—

MR. LAWRENCE BOGLE: (Interrupting) We object to the form of the question. He has not testified he made it out at all. In fact he testified that he did not.

MR. HAYDEN: Strike out the question then.

Q. (Mr. Hayden) Did you make out the hull or the lumber on the "Strathalbyn" at any time that evening?

A. Only when I passed between the two ships, that I could discern that it was a large craft.

Q. You didn't see her when they were coming down towards you? A. No.

Q. All you saw was the red light?

A. The dim red light, that is all.

Q. As you passed the "Strathalbyn", did you see any other lights aboard of her?

A. Only a very dim headlight, or what I took to be a headlight.

Q. Yes. That was in the position where the headlight should be?

A. Where it should have been, yes sir.

Q. Did you notice any lights in her cabin?

A. No sir.

Q. Did you notice any lights in her chart room?

A. No.

Q. You didn't notice any lights in the forecastle head, I suppose?

A. If I remember rightly, there were possibly a

few gleams of light, but I can't remember what their position was; they were very dim, whatever they were; possibly somebody was walking about with a lantern, but it was obscured by—

Q. (Interrupting) But you don't remember that at this time; I say, that is speculation, is it, or do you remember anybody walking about with a lantern?

A. No, I can't say positively that there was.

Q. How long have you known Captain Duffy? I don't think you answered that.

MR. LAWRENCE BOGLE: You asked him that once.

MR. HAYDEN: I don't remember his answer.

MR. LAWRENCE BOGLE: About two years.

Q. (Mr. Hayden) Is that what you say?

A. I think nearly two years since we were on the "Chippewa".

Q. You were shipmates with him, were you?

A. Yes sir.

Q. How long were you shipmates with him?

A. Oh, I don't remember exactly; possibly a month, maybe less.

Q. Maybe more?

A. No, I don't think it was more than that.

Q. Now, as you were approaching the "Virginian" and the "Strathalbyn", there was movement either in the "Virginian" or the "Strathalbyn", was there not, either one or the other of the vessels, or both of them, were moving?

A. Well, the craft that carried the red light was moving; I am certain of it because it was drawing away from these high white lights.

Q. And the craft that carried the red light was to the east of the "Virginian"?

A. No sir, she was to the west.

Q. The red light was to the west of the "Virginian"? A. Yes.

Q. Put an arrow showing the way the "Strathalbyn" and the "Virginian" were heading, will you please?

A. You want one arrow to show the—

Q. (Interrupting) The way each boat was heading.

A. (Witness does as requested.)

Q. On this chart indicate the position your boat was in when you first saw the red light?

A. When I first saw the red light was possibly just about where I changed my course.

Q. A little before you changed your course?

A. Yes, it was just an instant or two.

You may make a mark there on the map, please,—before you changed your course, was it?

A. Yes. Now, this is not exact, you see, I should have—Mr. Bogle—

Q. (Mr. Lawrence Bogle) What is that?

A. In making this I should have come up here a little more on her usual course and then changed it, you see; there should be a bend in here.

Q. (Mr. Hayden) Well, make it just the way it should be, Mr. Draper.

A. You see what I was getting at when I drew this, I drew the regular course and then drew this (marking). Now, that is more near.

MR. LAWRENCE BOGLE: Better mark that "X-1" then.

MR. HAYDEN: Better scratch out this other cross, it seems to me.

THE WITNESS: That will erase.

MR. HAYDEN: I would not try to erase it, I would take my pen and draw a wavy line through it. I would not erase it. Just leave it as it is. Draw a pen line through it then so that the record will show that it is scratched out by cross lines.

A. (Witness marks ink cross lines across line referred to.) It was possibly just a minute or so before I changed the course. (Marking.) About there.

Q. (Mr. Hayden) That cross mark at the printed figures on the chart "108" is where you changed your course?

MR. LAWRENCE BOGLE: No, he is answering your question if that is where he thinks he first saw the red light.

Q. (Mr. Hayden) Where you first saw the red light; is that it? A. Yes.

Q. Why did you change the course nearer Robin-

son's Point from the point where you say you first saw the red light? A. How many minutes did—

Q. (Interrupting) No, why did you do it?

A. Why? Because I saw these lights and I was going to pass to the port of her.

Q. At that time, then, you thought there was only one vessel there; is that it? A. Yes.

Q. You intended to pass to the port? A. Yes.

Q. How long did it take you to run down, now, estimating from the time that you made up your mind you wanted to pass to port of that vessel, until you got to them—apart of the vessels until you got to them?

A. I didn't get your question clearly.

(Question read.)

A. Why, I can't understand that.

Q. All right, I will ask it over again.

Q. How long did it take you to run from the place marked "A", where you changed your course, until you got down to the "Strathalbyn" and "Virginian"?

A. Oh, that probably would be about six or seven minutes, I guess, possibly more. I can't remember the exact time, because I didn't—

Q. (Interrupting) Approximately is all I expect you to get at it. Now, show on the chart about where you passed the "Flyer"?

A. Why, the "Flyer" possibly passed me just shortly before I changed my course.

Q. Do you remember clearly about where that was, or is this an estimate? A. It would be an estimate.

Q. You remember it was before you changed your course, do you? A. Yes.

Q. All right. Now, where would that be about? As I move my pen along this way tell me where to stop and where you want it.

A. It would be pretty close to where I changed.

Q. Right about here? A. Yes.

Q. Well, make a dot there and mark it "F"; is that right? A. Yes, I guess that will be close enough.

Q. Can you remember the exact time you left Tacoma? You said, or I understood you to say, that it was about seven o'clock. Do you remember whether that is the exact time or not?

A. No, I don't right now. I have it in my log book.

Q. Have you got your log book here?

A. No, it is on the boat.

Q. And as I understand, then, at 7:55 is approximately the time you passed Robinson's Point?

A. No, it is not approximate. That is the time I passed Robinson's Point.

Q. That is right, is it?

A. That is the exact time on the log.

Q. That is what it shows on your log, is it?

A. Yes sir.

Q. Did you blow any whistles to either the "Strathalbyn" or "Virginian" to indicate the course you were taking to pass them? A. Yes sir.

Q. Did you get replies? A. No.

Q. From neither vessel?

A. No. I blew just two whistles to the "Virginian" when I changed to pass and leave her on the starboard.

Q. You blew two whistles to the "Virginian"?

A. Yes.

Q. You didn't get any reply?

A. No. It is nothing unusual.

Q. Now, when you were going between the two vessels, how far were you from the "Strathalbyn"?

A. Well, I believe 150 yards, maybe less.

Q. How much? A. Possibly 150 yards.

Q. And how far were you from the "Virginian"?

A. I don't know exactly. I know that I was closer to the "Virginian" than I was to the "Strathalbyn".

Q. And how far apart were the "Virginian" and the "Strathalbyn", estimating the best you can?

A. 200 or 250 yards. It is hard to remember just now exactly.

Q. Could you see the hull of the "Virginian" clearly as you passed between the two vessels?

A. Why, yes, I could distinguish the hull of the vessel.

Q. And could you distinguish the hull of the "Strathalbyn" clearly as you passed between them?

A. I would not say that I could distinguish the hull of either one clearly.

Q. You could distinguish the hull, though, of both of them, could you, make them out?

A. I could make it out that it was a hull, yes sir.

Q. On both vessels?

A. And I could tell the way they were heading by their rig and general appearance.

Q. Could you see the masts?

A. Of the "Virginian", yes sir.

Q. Could you see the masts of the "Strathalbyn"?

A. Not as clearly as I could the "Virginian".

Q. When did you first see the masts or outline of either of these vessels, aside from their lights?

A. Oh, when I was up to them and passing between.

Q. Didn't see either of them before you started to pass between them; is that it? A. No.

Q. You were as near to the "Strathalbyn", as you were approaching her, as you were when you were between her, were you not?

A. I don't get that clearly. I was—

Q. (Interrupting) As you were approaching you came as close to the "Strathalbyn" as you were when you were between the two vessels?

A. Oh, yes, about the same distance, I guess.

Q. Did you notice anything strange about the appearance of the headlight on the "Strathalbyn", other than its being, as you say, dim?

A. No, I can't say that I did. I tell you that I could not see anything that was like a headlight until I was right abeam of her or her foremast would be abeam of us.

Q. And her foremast was abeam of you?

A. Yes, or almost, and I—

Q. (Interrupting) Then how long after you were abeam of her did you see that light?

A. How long after? I just simply saw it, is all.

Q. How long was it in your vision?

A. Oh, just a minute or so.

Q. Well, was it a minute? Did you see it for a minute?

A. Did I see it for a minute? Possibly.

Q. Did you see it for longer than a minute?

A. I can't say that I did. I don't remember how

long I saw it. I know I saw it, just simply a light that was very very dim, hanging in her fore-rigging.

Q. And I would like to know, the best estimate you can give me, or is it the best estimate that you can give me that you saw it a minute or a minute and a half?

MR. LAWRENCE BOGLE: I object to that. He has answered it two or three times.

A. Well, I don't think I ought to be required to say how long I saw that light, because I can't remember.

Q. That is what I wanted to find out. But your impression at this time is that you saw it for a minute or minute and a half?

A. My impression at this time is that I saw a light in her fore-rigging which was very dim and I took to be her headlight.

Q. About the time, now, what is your impression about the time that you saw it, the length of time you saw it?

MR. LAWRENCE BOGLE: He has testified to that three or four times.

Q. As I understood you to say, a minute or a minute and a half or so; is that right? Is that your present impression about it?

A. Mr. Hayden, I—

Q. I only want your present impression, if you have any impression at all about it—

A. (Interrupting) I have told you I don't remember how long I saw that light.

Q. I see.

A. Or how long we were in passing it. I say I simply saw a light there.

Q. And at this time you haven't any impression of the length of time; is that what you want to say?

MR. LAWRENCE BOGLE: He has answered it. I think you had better let his answer go, rather than to ask him what he means to say.

MR. HAYDEN: I want to find out.

MR. LAWRENCE BOGLE: He says what he means to say.

Q. (Mr. Hayden) I want to know if you—

A. (Interrupting) Now, here, what you want to know is—I saw the light when her foremast would be

about even with our bow, but it only takes a minute or two for us to travel far enough so that it would be astern of us, out of my vision—if that is what you want to know?

Q. All right. Now then if there was nothing the matter with the position of that light, you should have seen it when you were directly ahead of her, shouldn't you?

A. Yes sir, if it had been a good light I should have.

Q. The light is supposed to show, as I understand—the masthead light, to show around the horizon two points abaft the beam, isn't it? A. Yes sir.

Q. On both sides? A. Yes sir.

Q. Were you paying any particular attention to this light prior to the time you got between the two vessels?

A. No more than that I was looking for other lights on the vessel aside from the red light.

Q. But at the time you saw the red light you thought there was only one vessel there?

A. I don't understand.

Q. Didn't you testify that when you saw the red light you thought there was but one vessel?

A. When I first saw the red light?

Q. Yes, and that afterwards it opened up and you saw a green light? A. Yes.

Q. And you saw the other lights drawing away from the red light?

A. It was so close with the lights of the "Virginian" that it might have been her port light.

Q. So this masthead light that you didn't see until you got between the "Virginian" and the "Strathalbyn" might have been co-mingled with the masthead lights of the "Virginian" too, you would not particularly notice it until you got between the two vessels; isn't that right?

A. No, I judge that I would not have noticed it. The light could not be seen at that distance, it was impossible.

Q. I just asked you if you didn't—while you were approaching the "Strathalbyn" as close to her as you did, when you were between the two vessels, and you answered "Yes, the distance would be the same".

A. Well, if you asked me a question like that I didn't fully understand you.

Q. Well, I want to—

A. (Interrupting) I don't see any reason for your trying to tangle me up.

Q. No, I am not, I am trying to get the straight of it. I am not trying to tangle you up at all, I am trying to get the straight of it. I want to know if it is not a fact that you didn't—

A. (Interrupting) Mr. Hayden, my course was—when I was approaching the two vessels, was about parallel with the course of the "Strathalbyn" and the nearest I was to her at any time was when I was passing between the two vessels. Of course the "Strathalbyn" to me was apparently ahead of the "Virginian", as I was not any closer than 150 yards, if I was that, and if you asked me whether I was the same distance when I was approaching her, I didn't understand it that way.

Q. When you crossed over past the bow of the "Strathalbyn" on your course you were about—

A. (Interrupting) I didn't pass the bow of the "Strathalbyn", that is, other than when she was laying parallel to my course. Any time I passed her bow I was so far away that I could not have told what she was.

Q. Are you sure that the "Virginian" was not moving at the time you went between the vessels, or is it simply your impression now that she was not?

A. If she was it was very slowly.

Q. The "Strathalbyn" then was drawing away from the "Virginian"?

A. Slightly. To me the "Strathalbyn" had a slight way on; I am not certain about it.

Q. Was the "Strathalbyn" swinging any, do you know, at that time?

A. She must have been before I arrived at the exact vicinity of the vessel.

Q. Did you see it so that you know?

A. I know that the red light was swinging away from the "Virginian's" lights.

Q. Yes—

A. And that red light—

Q. (Interrupting) But I mean could you tell from where you whether or not the "Strathalbyn" was swinging? A. I could see the red light moving, yes sir.

Q. The courses and distance that you have put the "Strathalbyn" down—her position and her apparent direction that she is taking there, how do you feel about that as being accurate or otherwise, do you feel that that would be the compass course?

A. No, it would have to be approximate course. I didn't know what course she was heading exactly, any more than I know the course I was steering, and that she would be laying about parallel to my course.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Captain, is there any particular reason why you should pay any attention to the "Flyer" and her course at the time she passed you?

A. No, sir.

Q. What side did she pass you on? A. Port side.

Q. I understand that the position of the two vessels as you have indicated them on this chart was the position of the two vessels as you passed between them; is that correct? A. Yes, sir.

Q. And not the position of the two vessels as you approached?

A. That is right. As I passed between them?

Q. As you passed between them?

A. That is all I know about their position, because then I could see.

Q. You don't know how the "Strathalbyn" was lying when you first approached them and saw the red light?

A. No, sir. I can only guess at that.

Q. Now, captain, you have stated here that the position marked "A," as I understand it, was about the position you were in when you first saw the red light of the "Strathalbyn"? A. No.

Q. That is not the position?

A. No. That was about where I changed my course to pass to the port of this steamer.

Q. That I saw ahead?

A. That I saw ahead, yes, sir.

Q. You didn't mean to testify that that is the position you were in when you saw the red light of the "Strathalbyn"?

A. No, sir, I didn't mean to testify it, if I did.

Q. Could you indicate about where you were when you first saw the red light, approximately?

MR. HAYDEN: He has already done that.

MR. LAWRENCE BOGLE: Where is it?

MR. HAYDEN: It has already been gone into.

MR. LAWRENCE BOGLE: Where is it?

MR. HAYDEN: "108."

Q. (Mr. Lawrence Bogle) Now, I was mistaken there. You have testified that at the point opposite the figure "108" on the chart was about where you were when you first saw the red light?

A. Well, yes, I guess that would be about right; that would be the approximate distance.

Q. Approximate distance. Now, captain, that is a matter of a mile or more away from the steamer "Strathalbyn." You have testified that you were not more than a quarter of a mile away when you first saw the red light. Now, which is correct, were you more than a quarter of a mile away, as it is shown on this chart, or is that just a rough estimate?

A. Well, this is a rough estimate. If you want to get down to exact figures, miles and time, we will go into that; but this is simply an approximate estimate.

Q. That is just a rough guess?

A. I have not measured that course nor measured the distance between Robinson and Pully. It is just a rough guess.

Q. Well, your testimony that you were a quarter of a mile away is nearer accurate?

A. Is nearer accurate, yes, sir.

Q. You don't know what the position of the "Strathalbyn" was at that time, do you?

A. No, sir, I don't.

Q. Were you running at full speed all the time there, captain, or did you slow up after you saw these lights?

A. I don't remember now, but I think we ran full speed.

Q. How far would you go in six or seven minutes, approximately?

MR. HAYDEN: Why, that is immaterial. He has already said he was making nine knots that night.

MR. LAWRENCE BOGLE: I am asking him how far he would go in six or seven minutes.

MR. HAYDEN: Well, calculate it.

MR. LAWRENCE BOGLE: Well, that is what I am asking him to do.

A. Well, how do you estimate that, by knots or by miles?

MR. HAYDEN: You said miles.

A. I said miles, yes.

Q. (Mr. Lawrence Bogle) What I am trying to get at is this: You have testified, as I understand you, that from the time you saw the red light until you were abeam or until you reached these vessels, it was about six or seven minutes. Now, if you were only a quarter of a mile away when you saw the red light, would it take you six or seven minutes to run that distance of a quarter of a mile?

MR. HAYDEN: I object to that as leading and I object to it as cross-examining your own witness.

MR. LAWRENCE BOGLE: I am cross-examining him on your examination.

A. No, it should not take so long as six or seven minutes to run a quarter of a mile. Did I testify that it did?

Q. I understood you so. Then from the time you saw the red light until you were up opposite these two vessels would be the time it would take you to run a quarter of a mile?

MR. HAYDEN: I object to that as leading and not proper re-direct examination.

Q. (Mr. Lawrence Bogle) What is your answer?

A. That is right.

Q. What lights were you carrying that night, captain, what kind of lights?

MR. HAYDEN: I object as immaterial.

Q. (Mr. Lawrence Bogle) Oil or electric?

A. Oil lights.

Q. How did the lights on the "Strathalbyn" compare with your lights?

MR. HAYDEN: I object to that as immaterial.

Q. (Mr. Lawrence Bogle) Just go ahead and answer. How did they compare with your lights?

A. Why, they compared very poorly.

Q. What do you mean—very much dimmer?

A. Yes, sir.

MR. HAYDEN: I want to move also to strike out all this testimony about the appearance of these lights, on the ground that it all was after the accident a considerable time and is immaterial.

Q. (Mr. Lawrence Bogle) Captain, after first picking up what you took to be the masthead light of the "Strathalbyn" and you knew that she was not in your course, did you pay any particular attention to it after that—after once seeing it? A. No, sir.

Q. Mr. Hawden has asked you about the requirements as to the masthead lights, as to how far around the horizon they should show. What distance should that light be visible—a masthead light?

MR. HAYDEN: I object to that. The law fixes that matter.

MR. LAWRENCE BOGLE: You went into that.

MR. HAYDEN: All right, go ahead. I have my objection.

A. It ought to be visible a distance of two miles, I think.

Q. (Mr. Lawrence Bogle) The masthead light, I am speaking of.

MR. HAYDEN: I object as cross-examining your own witness, and not proper re-direct.

Q. (Mr. Lawrence Bogle) Is that your answer as to the masthead light? A. Yes.

Q. Captain, all of the distances and the times that you have given here are all approximate, to the best of your recollection after a period of six or seven months, is that true?

MR. HAYDEN: That is objected to as having been all gone into on direct and cross-examination.

A. Why, yes, they are approximate.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) Captain, I understood you to say that the course that your vessel was taking and the course that the "Strathalbyn" was taking were parallel courses; is that right? A. Well, nearly so.

Q. Well now, this looks to be considerably away

from a parallel course; have you got her twisted around there too much?

A. I don't know. I said her course was nearly parallel with the course that I was taking—both of them; they might have been ahead a little bit, either one way or the other. The "Strathalbyn" apparently was headed more to the west of south.

Q. It just occurred to me when you said that it was nearly parallel courses that this is very far off from a parallel course, and I was wondering if you wanted to change the line of that drawing at all.

A. Well, if you want to go into that we will take the parallel rules and take the regular magnetic course and get it nearer.

Q. Well, I prefer to be as near accurate as we can get it. I think you had better do that, Mr. Draper, and get it accurate; if we are going to have it in the record at all, it had better be as accurate as you can get it, if you want to make any change there. Are you certain that she was headed inside of Robinson Point that night?

A. Yes. That is only an approximate distance, I can't get it accurately and you would not expect me to.

Q. Mr. Draper, this was a dark, clear night, was it not?

A. It was a dark night; it was clear atmosphere.

Q. Clear atmosphere? A. Yes.

Q. And the distances that you have given and estimated are taking that into consideration? A. Yes, sir.

Q. So that in that kind of a night it is a difficult thing to estimate distances accurately on the water, is it not?

A. Why, certainly it is. The only way you can judge is by the time that you run.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) As you were approaching these vessels, were you looking for a masthead light or something to indicate the position of this other vessel?

MR. HAYDEN: I object to that—when he said he was approaching them they were together—I object on the ground it is cross-examining your own witness.

A. Yes, I was looking for a masthead light on this other craft with the red light.

Q. (Mr. Lawrence Bogle) Why was it that you could not see them until you were within 150 yards?

MR. HAYDEN: Same objection.

A. Well, either it was obscured or else it was not burning bright enough.

Q. (Mr. Lawrence Bogle) If it had been a very bright light, properly set and burning, you would have seen it at a much greater distance, would you not?

MR. HAYDEN: I object to that on the same ground.

A. I would, yes, sir.

MR. HAYDEN: And the same motion applies, to strike it all out, as having been an occurrence that happened after the accident, and incompetent and immaterial.

(Witness excused.)

JOHN C. McDOWELL, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) What is your business, captain? A. Captain, master.

Q. You hold a master's license? A. Yes, sir.

Q. Have you a pilot's license? A. I had that first.

Q. For what waters?

A. Between Port Townsend and Olympia.

Q. How long have you held this license?

A. About twelve years.

Q. How long have you been a master?

A. About ten years.

Q. How long have you been following this business, captain, of seafaring? A. Fifteen years.

Q. What vessel are you on at the present time?

A. Steamer "Daring."

Q. What size vessel is the "Daring"?

A. She is 163 tons.

Q. What is her run, captain?

A. Between here and Tacoma, and way ports.

Q. Were you on the steamer "Daring" on the night of January 12th of this year—1912?

A. I can't swear to the date, no.

Q. How long have you been master of the "Daring"?

A. I can't tell you exactly that, either.

Q. Well, how many months or years?

A. About two years and a half.

Q. Captain, on the night of January 12th did you pass the steamship "Strathalbyn" coming out of the harbor of Tacoma? A. Yes, sir.

Q. Were you on duty at the time she was first reported? A. No, sir, I was off watch.

Q. Where were you?

A. I was in my room on the port side.

Q. What was the first intimation you had that you were approaching another steamer?

A. Well, I heard two whistles blown and my mate didn't answer.

Q. Where were you when you heard these two whistles, where was your steamer? A. Where was I?

Q. Where was the "Daring" at the time you heard these two whistles?

MR. HAYDEN: I object to this as immaterial and incompetent. I understand this is going into Tacoma harbor.

MR. LAWRENCE BOGLE: That is what I want to find out.

MR. HAYDEN: That is what he said.

MR. LAWRENCE BOGLE: Well, I am asking him myself.

MR. HAYDEN: He just answered it.

MR. LAWRENCE BOGLE: Well, I didn't hear him answer. That is all right.

Q. (Mr. Lawrence Bogle) Did you say you were going into Tacoma Harbor? A. Yes, sir.

Q. All right. What did you do then, captain, when you heard some vessel blowing to you?

MR. HAYDEN: Let my objection run to the whole of this as immaterial and incompetent.

MR. LAWRENCE BOGLE: It may run to all of this, if you want it to.

MR. HAYDEN: Well.

Q. (Mr. Lawrence Bogle) What did you do at the time you heard this steamer whistle?

A. When my boat did not answer back, I came out to see why he didn't, and I asked him what that was that whistled and he said he could not see what it was.

MR. HAYDEN: Now, I object to that as hearsay, and move to strike it out.

Q. (Mr. Lawrence Bogle) Just tell what you know about it, captain. What orders, if any, did you give at that time?

MR. HAYDEN: I object to that as immaterial and irrelevant.

Q. (Mr. Lawrence Bogle) Go ahead and answer.

A. Well, I told him—I saw this little white light moving along against the background over in Tacoma there and I told him he had better put his wheel over and go behind her and give her two whistles—to answer the whistle; that he could not see the side light.

Q. (Mr. Lawrence Bogle) Did he do that?

A. He did.

Q. What else did you see at this time of this vessel?

A. I just noticed one little white light.

Q. Where was that white light?

A. It was hanging over the bow.

Q. Could you make out this other vessel which was coming out of the harbor?

MR. HAYDEN: I object to that as immaterial, incompetent and irrelevant.

Q. (Mr. Lawrence Bogle) I say, could you make out this other vessel?

A. Well, just a dark object was all, moving along.

Q. You knew that something was there?

A. Yes.

Q. Could you see her masthead light?

MR. HAYDEN: I object as immaterial.

A. I never noticed.

Q. (Mr. Lawrence Bogle) What lights did you see, if any, captain?

A. Just that one little light, was all I noticed in particular, because I was looking for her side lights.

Q. Did you afterwards see her side light?

A. I did when we got almost abeam, yes.

Q. And about how far away?

MR. HAYDEN: The same objection as to all of this.

Q. Go ahead and answer.

A. About how far away?

Q. Yes, when you saw her side light?

A. Oh, we could not have been more than about 500 feet or so.

Q. And what was the color of this light?

A. The starboard light, the green one.

MR. HAYDEN: I move to strike it out as immaterial.

Q. What kind of a light was it, captain, was it bright or otherwise?

MR. HAYDEN: Same objection.

Q. (Continuing) —The light on this other steamer?

A. Well, it was not a very bright light, no.

Q. Could you tell whether it was an oil or an electric light?

A. I could not, but it was a very poor light for a big steamer like that.

Q. About how many points was this other steamer off of your bow—it would be off of your starboard bow, wouldn't it?

A. Well, she crossed our starboard bow or she went to port—or to starboard of us, you know, but I could not tell you exactly; it has been so long ago that I don't know.

Q. What was the bearing of this starboard—

MR. HAYDEN: (Interrupting) I want it understood, clearly, that my objection is running to all of this; is that right?

MR. LAWRENCE BOGLE: Certainly.

MR. HAYDEN: All right.

Q. (Mr. Lawrence Bogle) What was the bearing of this starboard light when you first saw it, captain?

A. Well, it was almost abeam.

Q. Almost abeam before you saw it? A. Yes sir.

Q. Captain, I wish you would indicate on this chart which is in evidence as respondent's exhibit "5-1," the course of this steamer which was coming out of Tacoma

harbor, which you now know to be the steamer "Strathalbyn"—

MR. HAYDEN: (Interrupting) I object to that and move to strike it out—counsel testifying.

Q. (Continuing) —and the course of your vessel, showing about the position of the two vessels when you first came on deck, the change in your course, the position of the two vessels when you first saw the starboard light on this other vessel?

A. That is pretty hard for me to say.

Q. You can indicate your position on here and what changes you made, can't you?

A. Yes; our course was south southeast from here in, but my compass has never been adjusted, you know; that is the course I always steer from Brown's Point in after I turn the Point; see? (Indicating.)

Q. About what time was this, captain?

A. It has been so long ago that I have forgotten.

Q. What time were you due in Tacoma? A. 6:30.

MR. HAYDEN: I object as immaterial.

Q. (Mr. Lawrence Bogle) Six what?

A. 6:30 we were due in.

Q. At night?

A. Oh, that must have been—well, that was pretty near 6:30 o'clock when I passed in, because the "Indianapolis" was behind me.

Q. (Mr. Hayden) I didn't hear what you said.

A. I said it must have been about 6:30 when I passed in, because the "Indianapolis" was behind me.

Q. (Mr. Lawrence Bogle) Captain, don't you think you could indicate on this chart your course and the bearing of this other vessel from you?

MR. HAYDEN: I object as immaterial.

A. That would be just about mine. (Indicating with rule.)

Q. (Mr. Lawrence Bogle) Just draw a line.

A. Draw a line on it?

Q. Yes.

A. (Witness does as requested, with pencil.)

Q. Now, I wish you would indicate on that course just about where your vessel was when you came on deck?

MR. HAYDEN: I object to it is as immaterial.

A. (Witness indicating) Right about in there.

Q. (Mr. Lawrence Bogle) About where was the vessel carrying this white light over her bow when you came on deck?

A. It was right over the forecastle head.

Q. No, I mean about where with reference to your vessel, taking her bearing from your vessel, about where was she and what course was she on, as near as you can tell?

A. She laid right in here, as near as I could judge.

Q. Just draw a little figure there to show your vessel and the way you were headed?

A. I have already got my course on there, you know; I was coming in here.

Q. What course was this other vessel on, as near as you can tell?

A. Well, that is hard to say. She was coming off about this way.

Q. Just draw a line there.

MR. HAYDEN: That is all objected to as immaterial.

A. (Witness does as requested).

MR. LAWRENCE BOGLE: Will you object if I run a pen over that?

MR. HAYDEN: No, I don't object to that; anything that helps the thing along.

MR. LAWRENCE BOGLE: That is all I am trying to do.

(Mr. Lawrence Bogle retraced the marks with pen and ink.)

THE WITNESS: That is about right, a little more over this way. I think he was coming over this way.

Q. (Marking) Is that right?

A. Yes, about right.

Q. Now, I will mark this line here "DD" with an arrow; that is the course of your vessel, was it, approximately? A. Just about that.

Q. I will mark this other line with an arrow indicating the direction "SS"; that would indicate the position or course of the other vessel, approximately. Now, I wish you would indicate on those two courses about

where this other vessel was at the time you came on deck and about where you were?

A. Well, she was almost dead ahead then.

Q. Well, just put on the line, just put "D-1" where you were and "S-1" where she was.

MR. HAYDEN: This is just approximate, isn't it?

MR. LAWRENCE BOGLE: Yes.

A. (Marking) Put "S" over here?

Q. (Mr. Lawrence Bogle) Yes.

A. (Witness marks.)

Q. I will just put "1" on that. Now, the "D-1" is the position of your vessel when you came on deck; "S-1" is the position of the other vessel? A. Yes.

Q. At that time what lights could you see, if any?

MR. HAYDEN: Objected to. The same objection runs to all this.

A. The little white light was all that I noticed.

Q. (Mr. Lawrence Bogle) Hanging over her bow?

A. Yes sir.

Q. Afterwards did you change your course any?

A. Yes sir.

MR. HAYDEN: That is objected to also as immaterial.

Q. (Mr. Lawrence Bogle) Just show what change you made in your course?

A. We just had to change very little. You see he was crossing my bow right in here when he whistled and I was about—

Q. (Interrupting) Just show here. About like that?

A. Not quite that much. We didn't have to go more than about a half a point or a point out of our way. I changed just as soon as I came out and seen it.

Q. Then "x" to "X" represents the change in your course that you made at the time of answering her whistle? A. Yes.

Q. Now, captain, what was the position of the two vessels when you first saw this starboard light on the other vessel?

A. We were almost abeam.

Q. She was on the same course?

A. Well, she was on the same course that she had been when I first seen her ; she never changed her course.

Q. And you were on the course marked "XX"?

A. Yes sir.

Q. And you were almost abeam?

A. Almost abeam when I saw her light, yes.

Q. How did that starboard light compare with the lantern which she had over her bow?

MR. HAYDEN: I object to it as immaterial.

A. It was dim compared with the lantern she had over the bow or the light she had over the bow.

Q. This light she had over her bow was a brighter light?

A. Was a brighter light, yes. It was a white light and the other one was green.

Q. Captain, could you tell as to approximately what sized vessel this vessel carrying the green light was?

A. Approximately I should judge—somewheres around 400 feet, as near as I could see in the dark.

Q. She was a large vessel? A. Yes.

Q. Could you see how she was loaded?

A. Well, I could not see until we got real close and then I seen she had the deck load on. I didn't know what it was yet.

Q. A deckload of what?

A. I don't know. I could not see it. It was too dark.

Q. Of course this other vessel was between you and the lights of Tacoma? A. Yes.

Q. As I understood, you did not see the masthead light at all? A. I never looked for it.

(No cross examination. Witness excused.)

A. L. MacMILLAN, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name?

A. A. L. MacMillan.

Q. What is your business, Mr. MacMillan?

A. Why, I have always followed steamboating myself.

Q. How long have you been in that business?

A. Since three years ago last August.

Q. What boat are you on now?

A. The "Daring" just now.

Q. What is the run of the steamer "Daring"?

A. Between Seattle and Tacoma and by way of Vashon Island.

Q. How long have you been on this steamer?

A. Since a year ago last May. No, I won't say all the time that, because I have been on other boats, but I was on it most of the time.

Q. Were you on this steamer on the night of January 12, 1912—of this year? A. Yes sir.

Q. What time did you arrive in Tacoma on that night?

A. I should judge about 6:45 or something like that; I would not say for sure.

Q. Did you pass the steamer "Strathalbyn" on that night, the night of January 12th?

MR. HAYDEN: We object to it as leading and suggestive, not the proper way to examine the witness.

A. Yes sir, if that was the night of the accident.

Q. (Mr. Lawrence Bogle) That was the night of the collision between the "Strathalbyn" and the "Virginian"? A. We passed her all right.

Q. You heard about the collision afterwards, did you? A. Yes sir, the next morning.

Q. The next morning? A. Yes sir.

Q. Where did you pass the steamer "Strathalbyn" that night?

MR. HAYDEN: This is all immaterial and objected to as immaterial, incompetent and irrelevant.

A. This was about—

MR. HAYDEN: (Interrupting) Same objection.

A. (Continuing)—eight or nine hundred feet over the other side of the lighthouse.

Q. The lighthouse where? A. On Brown's Point.

MR. HAYDEN: Just let the record show that Mr. Bogle consents to my objection running to this testimony as incompetent, irrelevant and immaterial.

MR. BOGLE: That is, that he objects and that it runs to all of this.

Q. (Mr. Lawrence Bogle) What position did you hold on the steamer "Daring"?

MR. HAYDEN: What did you say about it not running to it all?

MR. LAWRENCE BOGLE: I say you object to this and it runs to all of this examination, if that is what you mean.

MR. HAYDEN: Yes.

A. Why, deck hand or whatever you want to call it, and after dark I was supposed to be on lookout, and in foggy weather.

Q. (Mr. Lawrence Bogle) Were you on lookout at the time of passing Brown's Point? A. Yes.

Q. What first attracted your attention to the "Strathalbyn"?

A. Why, just her shape in front of these lights of Tacoma, is all.

Q. Had you ever seen her before?

A. Not to speak of. I don't think I did, no. Of course I might have seen her. I won't say for sure I didn't see her.

Q. About what time was it you first saw her?

A. Oh, about 6:35, I should think; I would not know, I don't know sure.

Q. About what was her position, at the time you first saw her with reference to your position?

A. Well, I am not very good on describing angles, but she was coming about like this and we were coming like that. (Witness illustrating).

Q. Did you report her? A. Yes sir.

Q. What did you report? A. Report?

Q. What did you report, as lookout?

A. Well, I reported there was a vessel coming out there with no lights that I could see at that time.

Q. I call your attention to chart, respondent's exhibit "5-1", and ask you if you were approximately in the position marked "D-1" here at the time you first saw the steamer coming out?

A. Where are we, supposedly?

MR. HAYDEN: Let him tell where he is supposed to be.

A. Well, about—we were in about in here somewhere; I would not say just where we were, I don't remember.

Q. (Mr. Lawrence Bogle) Were you running on a course approximately as indicated here?

MR. HAYDEN: I object to it as leading.

A. From here to here?

Q. Yes. A. What is this here?

Q. I ask you—

A. (Interrupting) Is this the N. P. Dock here?

Q. I don't know.

A. Well, if you want to know what course we were on, we were running on the regular course from there to the N. P. Dock.

Q. Now, this vessel, when you first saw her, was she running parallel to you or crossing your course?

A. She was crossing our course. As I said, she was like this and we were coming like that. (Witness illustrating).

Q. And about how far away? A. When?

Q. When you first saw her?

A. Oh, not more than a quarter of a mile, I should judge.

Q. Did you see any lights on her then? A. When?

Q. When you first saw her? A. No sir.

Q. You could just make out the loom of her hull?

A. Yes sir. I afterwards observed the steam from this winch—not observed it exactly, but then I heard the winch running, and then I could see the steam after she got close enough, a lantern over the end of her.

Q. A lantern over the end of her?

A. Over the forecastle head or whatever you want to call it.

Q. Where was this lantern hanging, over the side?

A. Yes sir, hanging over the side.

Q. When did you first see her masthead light, if at all?

A. Well, when I seen that it was about after we got almost abeam, I should judge; the steam from this winch—the steam from the winch obscured the head-

light, you see, so that I could not see it until we got almost abeam.

Q. When did you first see her side lights, if at all?

A. When we got abeam of her or a little more or a little abaft the beam, I would not say for sure.

Q. What was the color of that light?

A. It was a starboard light—green light.

Q. What kind of a light was it, was it bright or dim?

A. Dim light for an oil light or any other kind of a light, for that matter.

Q. Did you have to change your course at all to pass her? A. Yes sir.

Q. How did the masthead light look to you, was it a bright or a dim light?

A. Dim light, it was a very dim light, like the rest of the lights they had on her.

Q. How did the masthead light and the starboard light compare as to brightness, with the lantern which was hanging over her bow?

A. The lantern was all right, I could see that all right after we got over there?

Q. Was that a brighter light than the other lights?

A. Yes sir.

Q. You say that you heard about this collision the next morning? A. Yes.

Q. The next morning after passing this steamer coming out of Tacoma?

A. Well, I heard it in the next morning, or I heard it a whole lot around most every place; I don't know just where I heard it first.

CROSS EXAMINATION.

Q. (Mr. Hayden) You said you heard about the collision a whole lot?

A. Oh, quite a bit, yet—along the run—in Seattle.

Q. Who first talked to you about it in connection with the owners of the "Virginian"?

MR. LAWRENCE BOGLE: Objected to as immaterial.

A. Why, I don't know his name at all myself.

Q. (Mr. Hayden) When was it he first talked to you? A. Oh, the other day.

Q. Was that the first time he had any talk with you at all? A. Yes.

Q. How long ago?

A. Why, that was day before yesterday I think.

Q. Did you make a written statement to anybody?

MR. LAWRENCE BOGLE: I object to this as immaterial.

A. A written statement how?

Q. About what you have just been testifying to, to anybody.

A. What do you mean a written statement?

Q. Somebody write out something for you to sign?

A. No sir.

Q. Did you sign anything?

A. I didn't sign nothing.

Q. Didn't sign anything? A. No.

Q. When you were going in this night, you didn't know what vessels you were passing, did you? A. No.

Q. Didn't have any trouble avoiding her, did you?

A. Yes sir.

Q. Oh, you had some trouble avoiding her?

A. Yes.

Q. I thought you said you could see clearly her lantern that she had over her bow?

A. That lantern has nothing to do with navigating the vessel.

Q. But you could see it, couldn't you?

A. Oh, yes, I could see it.

Q. You knew there was a vessel there, didn't you?

A. I knew there was a vessel, but then I didn't know which way she was going, though.

Q. Didn't she whistle two whistles to you?

A. Yes.

Q. You knew then, didn't you? A. No.

Q. Didn't know then? A. No.

Q. Don't know what two whistles means?

A. Certainly.

Q. When you get two whistles can't you tell which way a vessel is going?

A. Well, yes, when she has her side lights and the range lights and masthead lights, you can tell which

way they are going, but if they have got only a lantern over the bow, you don't know—

Q. (Interrupting) You know which side she is going to pass you on, don't you? A. When?

Q. When you hear her whistles?

A. Oh, when I see—

Q. (Interrupting) When you hear her whistle?

A. When I see her side lights, yes.

Q. When you hear two whistles you know she is going on the starboard side of you, don't you?

A. If I can see her side lights.

Q. You don't know, otherwise? A. No.

Q. Two whistles don't mean anything, then, to you?

A. Two whistles mean on the starboard side, if you can see her side lights in the night, but if you don't see her side lights at night you are not supposed to answer them until you see them.

Q. Is that so? A. Yes sir.

Q. Who told you that?

MR. LAWRENCE BOGLE: I object to that—

A. I learned that.

MR. LAWRENCE BOGLE: That is international rules. He is stating it correctly.

THE WITNESS: Anybody that don't know that much, they don't know much.

Q. (Mr. Hayden) All right. What are you supposed to do when you hear two whistles—

MR. LAWRENCE BOGLE: (Interrupting) We object to that as immaterial.

Q. (Continuing) —when you do not see the lights?

MR. LAWRENCE BOGLE: We object to that as immaterial. He has not qualified as an expert.

A. I am no navigator myself yet.

Q. (Mr. Hayden) Then you don't know; is that what you mean?

A. Well, I suppose I know all right, but then I am not supposed to know.

Q. What do you suppose you know?

MR. LAWRENCE BOGLE: We object to that as immaterial.

A. I suppose I know just about as much as any of the rest of the lookouts on the Sound, maybe.

Q. (Mr. Hayden) What are you supposed to do when you hear two whistles and you do not see any side lights?

MR. LAWRENCE BOGLE: My objection runs to all this. I did not put him on here as an expert. He has not qualified as an expert.

Q. (Mr. Hayden) What are you supposed to do, according to your notion of it?

A. Well, if I was captain of a vessel, was on watch, and I heard two whistles and I didn't know where they came from, it seems to me I would stop my engines and reverse, if necessary, until I found out where them two whistles came from that was ahead of me.

Q. That is all you would do?

A. I would look in the night glass and see if I could see anything.

Q. Would you do anything else?

A. Well, I might shift my wheel; I would do that, yes.

Q. Anything else?

A. Oh, I don't know of anything else. I am not supposed to be a navigator.

Q. When you say you saw this green light abeam, you mean abeam of your ship? A. Yes sir.

Q. That don't mean you were abeam of the other ship? A. Abeam of us.

RE-DIRECT EXAMINATION

Q. (Mr. Lawrence Bogle) When the other ship was abeam of you, about what would your position be with reference to the other ship?

A. When the other ship was abeam of us?

Q. Yes. You testified that what you meant was that when you were abeam of the other ship.

A. When we were abeam of her, I could see her light, yes.

Q. Were you—

A. (Interrupting) Or she was abeam of us, I would not think it would make an awful lot of difference; it might.

Q. How was her bow with reference to your bow at the time you saw this light? A. How do you mean?

Q. Was your bow past her bow?

A. No, I don't think it was.

Q. You were off to her starboard? A. Yes.

Q. What I was trying to get at was what you meant by when this other vessel was abeam?

A. When she was abeam of us, or after seeing the light?

Q. Yes, was that light directly opposite your beam when you saw it?

A. Well, I should judge it was, yes.

Q. If you heard another vessel giving two whistles to you, that would indicate that she had seen you, wouldn't it? A. Yes sir.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Just a minute. You say the steam obscured—the steam that you were talking about was steam coming from the winch on the forecastle head? A. Yes.

Q. And that obscured the headlight? A. Yes sir.

Q. There was a good deal of steam around there, wasn't there?

A. I expect there was. The winch was making a dickens of a noise up there.

Q. The wind was blowing from the southwest, wasn't it?

A. I don't know for sure which way it was blowing.

Q. Blowing from a southerly direction; do you know about that? A. I think it was, yes.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Could you tell what they were doing on the forecastle head with this winch?

A. As near as I could find—as near as I could say, they were heaving the anchor.

Q. Heaving the anchor?

A. That is what I thought they were doing, anyway.

MR. LAWRENCE BOGLE: That is all.

THE WITNESS: If they didn't have the light over the bow I might not have known what they were doing.

(Witness excused.)

ELMER E. STONE, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary, to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) Just state your full name? A. Elmer E. Stone.

Q. What is your business? A. Marine engineer.

Q. How long have you been a marine engineer?

A. About two years.

Q. How old are you? A. Twenty-four this month.

Q. What vessel are you working on at this time, if any?

A. Chief engineer of the steamer "Daring."

Q. How long have you been on the "Daring"?

A. Three years; been on her practically since she was launched.

Q. Were you on the steamer "Daring" on the night of January 12th, this year? A. Yes sir.

Q. What run was she on at that time?

A. She was on the East Side mail run, between Seattle and Tacoma.

Q. What time did she arrive in Tacoma on that night?

A. Well, I could not tell exactly. Approximately 6:30.

Q. Do you remember, Mr. Stone, of passing a large vessel bound out of the harbor of Tacoma as you were going in? A. Yes sir.

Q. What time did you pass this vessel?

A. Well, I could not give the exact time; somewhere between six and seven o'clock in the evening, probably about 6:30.

Q. Where were you at the time you saw her?

A. We just rounded Brown's Point, heading for Tacoma.

Q. Where were you standing, I mean?

A. I was in the window on the starboard side, on the main deck, about amidships.

Q. What did you see of this other vessel?

MR. HAYDEN: This is all objected to as imma-

terial, incompetent and irrelevant. The same runs to the whole testimony of this kind. Do you consent to it?

MR. LAWRENCE BOGLE: All right, if you want it to.

A. Do you mean what attracted my attention to the boat first?

Q. Yes.

A. Well, I heard—we blew two whistles, starboard whistle, and I went to the window, out of curiosity.

Q. (Mr. Hayden) You blew two whistles?

A. Well, our steamer.

Q. (Mr. Hayden) Yes. Well, I meant that, of course. A. Yes.

Q. (Mr. Lawrence Bogle) You went to the window and looked out?

A. And I saw a large boat passing, crossing our bows it were.

Q. How could you make her out, did you see any lights on her?

A. Well, the only light I could see was evidently on the forecastle head or hanging over the side, and they were running the anchor winch, heaving the anchor.

Q. What kind of a light was that?

A. A white lantern. Apparently just holding it over to see when the anchor came up.

Q. Was this vessel between you and the lights of Tacoma? A. Yes.

Q. Could you make out the hull of the vessel, the loom of the ship? A. Yes sir.

Q. About how large a ship would you say she was?

A. Oh, five or six thousand tons.

Q. Did she appear to be a Sound steamer?

A. No, an ocean-going steamer.

Q. Of course you were not close enough to make out her name? A. No sir.

Q. What other lights did you see aboard this steamer, if any?

A. Well, I looked in particular for a side light, which I could not see when I first noticed her.

Q. Did you afterwards see a side light on her?

A. When she was almost abeam of us.

Q. What kind of a light was that?

A. Green light.

Q. Was it a bright or a dim light?

A. Well, no, not very bright.

Q. How did it compare with the lantern which was hanging over her bow?

MR. HAYDEN: I object to that as immaterial.

A. Well, the lantern was very much brighter.

Q. (Mr. Lawrence Bogle) Did you see a masthead light at all on this steamer?

A. I don't remember looking for a masthead light.

Q. Well, I ask you if you saw one?

A. Well, I could not say.

Q. Did you hear of a collision between the steamer "Strathalbyn" and the steamer "Virginian" on the morning after you saw this steamer going out of the harbor of Tacoma?

MR. HAYDEN: I object as immaterial.

A. Yes sir.

Q. You are sure you heard that the next morning after seeing this steamer going out?

A. I heard it on the dock and also saw it in the Morning Ledger there—an account of it.

Q. Do you know whether you had changed your course in passing this steamer?

A. Yes sir.

Q. What change in course did you make?

A. Well, we swung to the left to get away from her, let him pass across our bow.

Q. What was the bearing of this green light when you first saw it, that is, where was the steamer "Daring" with reference to this other steamer when you saw this starboard light?

A. Directly opposite the other steamer going—

Q. (Interrupting) Almost abeam?

A. Almost abeam.

Q. And about how far away?

A. Well, I should say three or four hundred feet.

Q. What was the appearance of this steamer, was she loaded or light?

A. She apparently had a large deck-load; was pretty low in the water.

Q. Could you see what the deckload was?

A. Well, it appeared to be lumber.

Q. And could you make out her hull, whether she had a light or a dark hull?

A. It was evidently a black hull; it was not light.

Q. Could you make out the rig of the steamer at all? A. Well, could see the stack.

Q. Single stack?

A. Single stack, and the masts, and see she was a steamer.

Q. How many masts did she have—two masts?

A. Two, I believe.

Q. About how long would you say she was?

A. Well, hat is pretty hard to say at night. Possibly 350 feet.

Q. Could you tell whether she was a foreign vessel, that is, an ocean-going vessel, or a Sound steamer?

A. Well, she had no range light, which the Sound steamers are supposed to carry.

Q. Did you see the steamer "Indianapolis" on this night?

A. Well, I probably did, but I don't remember anything particular about her. If I remember correctly, we got to Tacoma ahead of her.

CROSS EXAMINATION.

Q. (Mr. Hayden) In the changing of the course, Mr. Stone, do you have anything to do with that?

A. No sir.

Q. How did you tell she was changing her course?

A. Well, I can tell from lights ahead of us, or looking astern.

Q. You remember that now, do you?

A. Yes, sir.

Q. That she changed at that time. You remember she changed at that time? A. Yes sir.

Q. You say this green light was not very bright. It was an oil light, wasn't it? A. Well, apparently so.

Q. And you saw it when you got about abeam of her? A. Yes sir.

Q. And you didn't see it before you got abeam of her? A. No sir.

Q. Have you got any idea why you did not see it before you got abeam of her? A. None whatever.

Q. None whatever. The way it was burning there, you would have seen it, though—ought to have seen it, unless there was something obstructing it, shouldn't you, before you got abeam of it? A. Yes, at that distance.

Q. This man, Mr. MacMillan, he was a shipmate of yours at the time? A. Yes sir.

Q. He testifies that there was a good deal of steam coming out of the winches; did you notice that?

A. Yes sir, exhaust from the anchor winch.

Q. And the wind was blowing from the south, wasn't it—southerly direction?

A. Well, now, I believe so. I would not care to make a statement to that effect.

Q. And you were on the northeastern side of the vessel? A. Yes sir.

Q. Mr. MacMillan testified that he did not see the masthead light, because the steam coming from the winch was—

MR. LAWRENCE BOGLE: (Interrupting) We object to what Mr. MacMillan testified to.

MR. HAYDEN: You can strike out Mr. MacMillan's testimony then, if you want to.

MR. LAWRENCE BOGLE: I object to your quoting it to this witness. He is competent to testify for himself.

Q. (Continuing) —so that he did not see the headlight. Now, you say you did not look for the headlight—the masthead light?

A. No sir, not in particular.

Q. So you don't know whether it was burning or not? (No response.)

Q. And your duties were principally down in the engine room at that time, were they? A. Yes sir.

Q. And you merely came out because you heard the two whistles from your vessel blowing?

A. Well, I was on deck and I turned to the window to look out.

Q. You were on deck? A. Yes sir.

Q. And you turned to the window. I don't quite catch that, how do you mean?

A. Well, just as if I stood here and walked to that window and looked out. I was not down in the hole.

Q. You were in your engine room, weren't you?

A. Yes. We handle the engine from above, on the main deck.

Q. Right on the main deck?

A. Yes, just have a grating out over the hole.

Q. But the engine is housed in? A. Yes sir.

Q. You handle it inside of a house. A. Yes.

Q. So that you have to look out of a window. The window was on the starboard side? A. Yes sir.

Q. Were you about opposite this vessel that you speak about when you looked out of the window?

A. No sir.

Q. You were ahead of her?

A. Well, she was head of us.

Q. Well, either way. The night was a dark night, wasn't it? A. Yes, sir.

Q. It was a clear atmosphere, though?

A. There were no fog or haze.

Q. You don't know that this vessel that you saw was the "Strathalbyn"—did not know it that night, did you? A. No, I could not see her name.

Q. Didn't know it was her when you passed?

A. No sir.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Mr. Stone, did you pass any other large vessel, did you see any other large vessel going out of the harbor of Tacoma that night when you were going in? A. No sir.

Q. How did this light appear, did it open gradually or how did it appear to you when you first saw it—the starboard light?

A. It appeared as if there were some obstruction in front of it, and it showed up gradually.

Q. Was the steam on the forecastle head—would it have been possible for that to have obstructed the starboard light, was it blowing back aft?

A. I hardly think so.

Q. Do you know the direction of the wind that night?

A. No, I don't remember. However, I remember that

the steam from his winch was following along with the boat as if there were a fair wind or no wind at all.

(Witness excused.)

A. L. MacMILLAN, being recalled for further REDIRECT EXAMINATION, testified as follows:

Q. (Mr. Lawrence Bogle) When did you go on the lookout the night of January 12th, Mr. MacMillian, the night before this collision happened?

A. Well, I don't remember just the time. Just at sun down or a little after.

Q. Would that be before you reached Brown's Point? A. Yes sir.

Q. Before you reached Dash Point? A. Yes.

Q. Would it be before six o'clock?

A. Well, I don't know. I tell you I don't remember just when it was. Sometimes the sun is down a little later.

Q. January we are speaking of now, January 12th.

MR. HAYDEN: He says he don't remember.

Q. (Mr. Lawrence Bogle) Did you see the light on Brown's Point? A. Yes sir.

Q. Did you pass Robinson Point that night?

A. Yes, we passed Robinson Point.

Q. Was the light burning. A. Yes sir.

Q. About what time did you pass Robinson's Point?

A. No, I don't know whether the light was burning or not.

Q. You don't know?

A. Because I don't remember whether it would be sun down.

Q. But you know—

A. (Interrupting) I know if the light was not burning and we went past there and it was not burning I would see it.

Q. You know that you were on watch, though, before you reached Brown's Point? A. Yes.

Q. Did you see or report any large vessels going out of the harbor of Tacoma that night except this vessel to which you have testified? A. No sir.

Q. Do you remember of reporting any other vessel going out of there. A. Not any large vessels.

Q. No large vessels. A. No.

Q. Nothing except sound steamers?

A. That is all.

Q. You are certain of that?

A. Yes. Not any ocean-going vessel.

Q. You were the only lookout on duty that night, were you? A. Yes.

(Witness excused.)

A recess was here taken until 2:15 o'clock this afternoon.

AFTERNOON'S PROCEEDINGS,

September 20, 1912.

PRESENT: Same parties as at former hearing.

HOWARD PENFIELD, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name?

A. Howard Penfield.

Q. What is your business? A. Master mariner.

Q. Do you hold a master's license? A. Yes.

Q. Master's papers. Do you hold a pilot's license?

A. Yes.

Q. In what waters?

A. Inland water, Puget Sound, tributaries and adjacent waters.

Q. How long have you held that license?

A. Twelve years.

Q. How long have you held master's papers?

A. Twelve years.

Q. And how long have you been following a seafaring life? A. Thirty years.

Q. You have been twelve years of that time on the Sound, have you? A. Yes sir.

Q. How old a man are you, captain?

A. Fifty-one.

Q. You are master of the steamer "Indianapolis" during the month of January of this year, were you?

A. Yes sir.

Q. On the run between Seattle and Tacoma?

A. Yes sir.

Q. Captain, on the night of January 12th did you pass the steamer "Strathalbyn"?

A. Yes, sir.

Q. Where did you pass or meet her the first time?

A. I met her at Brown's Point.

Q. She was headed which way?

A. She was headed to the northward.

Q. She was coming out of the harbor?

A. Yes.

Q. And you were going into the harbor?

A. Yes sir.

Q. What did you first notice about the steamer "Strathalbyn," what attracted your attention to her?

A. Saw her masthead light first.

Q. At that time, captain, could you tell what course she was on—the "Strathalbyn"? A. No sir

Q. Was this masthead light moving? A. Yes sir.

Q. Was it moving across your course. A. Yes sir.

Q. How could you distinguish that masthead light, tell that it was moving?

A. I saw it from the other lights in Tacoma on the background, it was moving across my bow.

Q. It was moving across the stationary lights of Tacoma. A. Yes sir.

Q. And that is what attracted your attention?

A. Yes sir.

Q. At that time could you see any other lights aboard the "Strathalbyn"? A. No sir.

Q. Could you make out the hull of the vessel?

A. Not then, no sir.

Q. The only thing that you had to go by, that you knew that there was a vessel or any craft ahead, was this one light which was moving across the lights of Tacoma? A. Yes sir.

MR. HAYDEN: Let the witness testify, will you please, and not ask him leading questions.

Q. (Mr. Lawrence Bogle) About what time was that, captain?

A. That was about 6:34, something like that.

Q. Did you say p. m.? A. Sir?

Q. Did you say p. m., in the evening?

A. P. m., yes sir.

Q. After that, captain, did you see any other lights on the "Strathalbyn"?

A. Not until I got pretty close to her.

Q. Then what lights did you see?

A. I saw her side light.

Q. Which one? A. Starboard side light.

Q. About how far away were you when you saw that? A. Oh, about a quarter of a mile.

Q. Were you ahead of her or abeam.

A. Practically ahead.

Q. About how many points off was the bearing of this light?

A. It was about a point and quarter, something like that, on my starboard bow.

Q. How did you pick that light up, captain?

A. I saw it first with my glass.

Q. Picked it up with the glasses? A. First, yes.

Q. You could still see the headlight, could you?

A. Yes sir.

Q. And you were looking for side lights?

A. Yes sir.

Q. What kind of a light was that, captain?

A. The starboard light?

Q. Yes. A. What kind of a light was it?

Q. I don't mean as to color, but as to brightness?

A. Well, it was pretty dim at first.

Q. Would you call it a dim light? A. Yes sir.

Q. How far were you away before you saw it with a naked eye, captain?

A. Well, I could not say exactly; up pretty well abeam.

Q. Pretty well abeam of her? A. Yes sir.

Q. Captain, will you draw on this chart or lay out as nea ras you can your course in making Brown's Point-Tacoma?

A. You haven't got dividers here, have you?

Q. No. We might have this in red ink, to distinguish it from the others.

MR. HAYDEN: Might as well.

THE WITNESS: I will make this do.

Q. (Mr. Lawrence Bogle) You may have to use black ink.

A. No, that is all right. (Witness marking with pen and red ink.) That is my course. I rounded Dash Point a quarter of a mile off, and Brown, that evening I was about an eighth of a mile.

Q. I will mark this, your course going to Tacoma, an arrow with "Indianapolis" on it. That is your course going into Tacoma—that was your course, rather?

A. Approximately, yes sir.

Q. Captain, where were you when you first saw this masthead light of the "Strathalbyn," if you can show that—

A. (Interrupting) Just rounded Dash.

Q. What course was she on at the time?

A. She was coming out of the harbor. I could not tell the course. I only saw his masthead light, opened up past high land here on Brown's Point—here is a high knoll up here—I saw his masthead light just as I rounded on my course at Dash—not long, maybe a half a minute or something like that, past this high land here—there is a knoll in here at Brown Point—and his masthead light is pretty low, and he opened up his masthead light and I could not tell his course coming out, whether he was heading off here or coming on an angle like this. (Witness illustrating.)

Q. Just indicate there about your position when you first saw this side light of the "Strathalbyn"?

A. What will I do, draw a line across there or put a dash in?

Q. Put a cross there.

A. (Witness does as requested.)

MR. HAYDEN: What is that supposed to be?

Q. (Mr. Lawrence Bogle) The "X" which you have marked under the words "Dash Point" there—

A. That is my position when I first saw his masthead light.

Q. Indicate on this course your position when you first saw his starboard light?

A. (Witness marks "X".)

MR. HAYDEN: Put a circle around that. I think it would be a good way to distinguish it.

(Witness does as requested.)

Q. (Mr. Lawrence Bogle) Well, the point you have marked with a "X" in a circle is your position when you first saw his starboard light? A. Yes sir.

Q. Now, from the bearing of that light, I wish you would locate the light on the map—that is, the steamer with the light, as to her position.

MR. HAYDEN: You mean the "Strathalbyn's" position?

MR. LAWRENCE BOGLE: Yes.

A. (Witness marks) About there.

Q. (Mr. Lawrence Bogle) Could you tell her course, captain?

A. About there. About a point and a quarter on the starboard bow.

Q. (Mr. Hayden) Will you mark that dot there so that we can identify it? I don't mean making it bigger, but so that we can identify it in some way.

MR. LAWRENCE BOGLE: I wanted to get the captain, if he could—

THE WITNESS: (Interrupting) What do you want, an "X" there? I can put another circle around it.

Q. (Mr. Lawrence Bogle) Better mark that with the letters "Strath."

A. (Witness does as requested.)

Q. Captain, could you tell at that time what course the "Strathalbyn" was on?

A. It was very near parallel to mine. She was heading a little broad on me, very near a parallel.

Q. By "broad" you mean—

A. (Interrupting) A little sider; he was steering a little wider, steering a little more to the eastward—or to the westward, rather.

Q. Just put his course on there.

A. This is guesswork on his.

Q. Of course, you could see his masthead light then and his side light. A. (Witness marks.)

Q. I will mark that an arrow with "Strath. course" (marking). Captain, if the starboard light of the "Strathalbyn" had been properly set and burning and

unobstructed, would you have seen it before you had reached the point you have indicated here?

MR. HAYDEN: I object to that as calling for a conclusion and immaterial. A. Yes sir.

Q. (Mr. Lawrence Bogle) It would have been visible to you for some distance, would it?

MR. HAYDEN: Objected to as immaterial.

A. Yes sir.

Q. (Mr. Lawrence Bogle) Captain, after passing the "Strathalbyn" you went on into Tacoma, did you—after passing the "Strathalbyn" at Brown's Point you proceeded on your voyage to Tacoma?

A. Yes sir.

Q. And what time did you leave Tacoma for your return voyage to Seattle? A. Seven p. m.

Q. Did you pass the steamer "Strathalbyn" again on that voyage? A. Yes sir.

Q. About where did you pass her?

A. About a mile to the northwestward of Robinson Point.

Q. Do you remember what time you passed Robinson point on that night?

A. If I remember correctly, it was 7:41 or—40—40 or—41.

Q. Do you remember about what time it was that you passed her?

A. I passed her about four minutes after; —45 or —46; I ain't sure which.

Q. What attracted your attention to her at this time, captain?

A. Well, I looked at the—what made me look at the clock was I thought it was funny she hadn't got any further from the time I met her at Brown's Point until I overtook her and passed her to the northward of Robinson.

Q. Could you see any lights on her, coming up the stern of her. A. No sir.

Q. Have any stern light?

A. No sir. I saw a couple of lights in the cabin when I got very close to her, in the chart house, somewhere around—port hole lights they were—round.

Q. That is after you were passing her?

A. That is to the northward and westward of Robinson, yes sir.

Q. What was the first that you saw of this vessel, what first attracted your attention?

A. The loom of her.

Q. Did you know what it was at the time?

A. No sir.

Q. Did you know it was a vessel?

A. I thought it was a sail boat of some kind.

Q. What did it look like, captain, in the water?

A. Looked like a dark object.

MR. HAYDEN: I object as immaterial.

Q. (Mr. Hayden) Coming up to the stern of her, weren't you, captain? A. Yes sir.

MR. HAYDEN: Objected to as immaterial.

Q. (Mr. Lawrence Bogle) Was she pretty hard to pick up?

A. Well, she was about—not very hard, when I got close enough to her.

Q. How close were you to her before you picked her up, coming up stern of her?

A. Well, pretty close to her, I could not tell exactly; maybe a quarter of a mile.

Q. Probably a quarter of a mile. A. Yes.

Q. And did you change your course any to pass her? A. Yes sir.

Q. You passed her on what side?

A. Passed aport of her.

Q. (Mr. Hayden) On your port?

A. Passed her on my port, yes sir.

Q. (Mr. Lawrence Bogle) Did you see any of her side lights at this time?

A. Not until I got abeam—pretty near abeam.

Q. Well, what lights did you see?

A. The starboard light, green light.

Q. How far off were you when you saw this light?

A. The green light?

Q. Yes, how far were you off from the "Strathalbyn"?

A. I was pretty close to her; maybe—well, inside of 50 yards, I guess.

Q. How did the light appear at this time, captain?

MR. HAYDEN: I object to it as immaterial.

A. It appeared a little brighter to me.

Q. (Mr. Lawrence Bogle) What was your course in passing her, with reference to her course?

A. It was—he was steering a little broader than me; he was pretty near parallel with my course—not exactly—he was a little over to the westward—his course was a little more to the westward than mine.

Q. You were making better way than he was, weren't you? A. Yes.

Q. Did you watch this green light as you passed him? A. Yes sir.

Q. And for how long a time could you see it?

A. Oh, probably inside of a quarter of a mile after I passed him.

Q. Then what happened to it?

A. It commenced to fade away again. Acted about the same when I was leaving it as it did when I was coming up on it at Robinson—Brown's Point, rather.

Q. What do you mean by that?

A. It seemed to fade away as if something was obscuring the light.

Q. You were about how many points off her bow when it faded away?

MR. HAYDEN: This is all objected to as immaterial.

A. About a point, about the same angle as I met him at Robinson; maybe a little inside of that, maybe three quarters of a point.

Q. Then, captain, there was some little space directly ahead of this vessel, where her lights were not visible?

MR. HAYDEN: I object to that as leading.

Q. Is that true?

MR. HAYDEN: And suggestive.

A. The starboard light was.

Q. I didn't get your answer.

A. The question again, please.

(Question read.)

A. The starboard side light. Could not vouch for any port side lights.

Q. You were not in a position to see her port light?

A. No sir.

Q. Did you notice her masthead light at this time, captain? A. Yes sir.

Q. How did that appear, as to brightness?

A. Well, it was not very bright. A dim light.

Q. Did you watch it for any length of time after passing her?

A. Not after I lost the side light. I didn't look back after that?

Q. You didn't see the masthead light after you were a quarter of a mile ahead? A. No. sir.

Q. After passing the "Strathalbyn," captain, did you continue on your course to Seattle? A. Yes sir.

Q. Did you pass the "Flyer"? A. Yes sir.

Q. And the "Virginian," after that? A. Yes sir.

Q. About where did you pass the "Flyer" and the "Virginian"?

A. To the southward of Three Tree—Pully Point.

Q. And what side did you pass them?

A. I passed aport of them.

Q. About how far away?

A. Well, we were probably three eighths of a mile.

Q. What was the position of the "Flyer" and the "Virginian" at that time?

A. They were neck and neck.

Q. About how far were they south of Pully?

A. Oh, about a half a mile, I should judge.

Q. Had you heard any whistles up to that time?

A. No sir.

Q. Do you remember what time you passed Pully on this night?

A. It was either 55—7:55 or —56.

Q. And do you remember what course you steered from Robinson to Pully?

A. I know my compass course.

Q. What was that?

A. Northwest three eighths north.

Q. Is that true or magnetic?

A. That is compass course.

Q. Your ship's compass?

A. That would be about northwest three fourths north magnetic.

Q. Did you change your course any to pass the "Strathalbyn" at Robinson? A. Where?

Q. North of Robinson? A. Yes sir.

Q. And you passed her about parallel courses?

A. Very near, very near. She was steering more to the westward than me; she was steering a little broader course.

Q. And you passed about how far off of Pully?

A. Off Pully?

Q. Yes.

A. I passed off Pully about three-eighths of a mile; maybe a quarter—three eighths—about three eighths.

Q. Could you tell anything as to the course of the "Virginian" and the "Flyer" at that time?

A. Not exactly, no sir.

Q. Captain, what was the appearance of the "Strathalbyn" on the water, was she a hard vessel to pick up? I don't think I asked you that.

A. Yes sir.

Q. After she had passed Robinson?

A. Both times.

Q. What do you mean by that, captain, why was she hard to pick up?

A. Well, she was very deceiving, couldn't tell what she was or what it was, whether it was a scow or a sail-boat or—the general appearance of the ship was deceiving on the water; you couldn't tell which way she was heading or anything else about her, whether you were meeting her headon or going up astern of her.

Q. Unless her lights were visible, you think she would be a hard vessel to pick out, coming headon, do you?

MR. HAYDEN: I object to that as leading.

A. Yes sir.

Q. (Mr. Lawrence Bogle) Could you see how she was loaded, captain?

A. We could see, after we got up close to her, she had a deck load of lumber on.

Q. Was she pretty low in the water?

A. She was on my side. She had a list, the side I passed her on.

Q. (Mr. Hayden) Listed over towards starboard?

A. Yes sir.

BY MR. W. H. BOGLE:

Q. Did you see the collision, captain? A. No sir.

Q. Did you know there had been one that night?

A. I could not have swore to it, but I surmised as much.

Q. What caused you to surmise as much?

A. After I passed the "Flyer" and "Virginian" and I got up abreast of Three Tree, I heard one whistle, a passing whistle; I took it to be the "Flyer's" whistle; and I heard no answer, and I ran by Three Tree for a little bit and held her on her course—if I changed my course it would throw me out so that I could not see back—and I saw the "Flyer's" port side light; I knew then something was going wrong, and I saw the cluster of lights, which probably was the "Virginian's" lights, laying broadside to, it looked like, and cross angling the "Flyer's" port lights showed up. That is the only inkling I had of anything wrong until I arrived back in Tacoma.

Q. Were you looking for trouble among those boats, captain? A. Yes sir, I expected it.

Q. Why?

A. Why, the bad lights that the "Strathalbyn" had, and her general appearance on the water that night.

Q. Did you hear any other whistle than the one whistle which you supposed to be the "Flyer"?

A. No sir.

Q. Captain, was that masthead light of the usual brightness of mast-lights carried by vessels on these waters?

MR. HAYDEN: I object to that as leading.

A. No sir.

Q. Mr. Bogle.) Was the side light of the usual brightness?

MR. HAYDEN: Same objection.

A. No sir.

Q. (Mr. Bogle.) Captain, on your approaching the "Strathalbyn" while you were on your way in to Tacoma, near Brown's Point, did the "Strathalbyn" have any range light? A. No sir.

Q. Did you have any difficulty in picking up a side light? A. Yes sir.

Q. You were on a special lookout for a side light, were you? A. Yes sir.

Q. When you reached the point at an angle where ordinarily the side lights should have been in view, were you looking for one? A. Yes sir.

Q. Did you see any? A. No sir.

MR. HAYDEN: I object to that.

Q. (Mr. Bogle.) Did you look out to port any? A. No sir.

MR. HAYDEN: I object to that on the ground that the captain said he didn't know the angle on which the "Strathalbyn" was approaching him, and move to strike it out.

Q. (Mr. Bogle.) How far did you go after you reached a point when the side light should have been visible to you before it opened up so that you could see it? A. About three quarters of a mile.

Q. (Mr. Bogle.) Could you tell the course of the "Strathalbyn" during that time you were passing three quarters of a mile? A. Not accurately.

Q. Could you tell her approximate course?

A. Yes sir.

Q. Was it such a course as ought to have made the side light visible to you?

MR. HAYDEN: Same objection.

A. Yes sir.

CROSS EXAMINATION.

O. (Mr. Hayden) Now, captain, when you first saw the light of the "Strathalbyn", when the "Indianapolis" was at this position marked "X", how far away was the "Strathalbyn" from you, that is, as you were going into Tacoma?

A. About a mile and an eighth, I should judge; I could not tell how close he was to Brown's, coming out. He might have been a little further off here or pretty close in here; I could not tell, you see.

Q. Those big ships usually run quite a ways off the Point?

A. Not always. They come pretty close sometimes.

Q. Might have been a mile and a half?

A. Oh, no. He would have been ashore then on the other side.

Q. I say, a mile and a half from you?

A. Oh, a mile and a half. No sir, no sir.

Q. Well now, captain, I just want to refresh your memory here. In testifying before the inspectors, do you remember Captain Turner asking you the question, "You saw it all right, didn't you?" And your answering, "Yes, I saw the masthead light. You could see the masthead light. I saw it going into Tacoma. I saw it about a mile and a half when I met him at "Brown's Point"? A. There is a mistake—

Q. I want to call your attention to it.

A. But when you come to measure it off, you see I had rounded on my course here and I was fully an eighth to the southard of the beam of Dash, when he opened up here. Now, it is a mile, it is just exactly—I wish I had a pair of dividers here—I didn't have a chart before me to measure these distances off. I knew it was a mile from Dash to Brown—it is exactly a nautical mile from Dash to Brown. Well, whatever distance he was off here I don't know.

Q. That is south of Brown's? A. Yes.

Q. As he came out there?

A. But he was not a half a mile, I don't think. He would not keep off there a half a mile.

Q. And you saw his masthead light then?

A. Whatever distance that was from where he was to where I was was the distance I saw his masthead light.

Q. And you saw it just as he did open out around the Point, just as he came out around the bluff?

A. Just as he passed this high land here, he was running pretty near right angles to me, pretty near.

Q. Then he swung around the Point and came up on the same parallel course—a course parallel, very near paralleling yours? A. Yes sir.

Q. That is, paralleling your course from Dash Point to Brown's Point? A. Practically, yes sir.

Q. Now, when you got down to Robinson Point going back you say he was holding off to the westward or eastward of your course?

A. He was steering to the westward, broader than mine.

Q. He would be to the westward of your course?
A. Yes.

Q. Was there any other vessel like the "Strathalbyn" in your vicinity when you were coming around Robinson Point, coming back?

A. Yes sir, on my return trip—seven o'clock trip out of Seattle.

Q. No, out of Tacoma, when you were passing, overhauling the "Strathalbyn", just before the collision, at the time you have been testifying to, was there any other steamer there? A. No sir.

Q. Just you and the "Strathalbyn"? A. Yes sir.

Q. You never were in a position where you would see the port light, were you? A. No sir.

Q. Could you see these lights in the cabin, that you have mentioned, or the chart room, or any other lights on this vessel in the neighborhood of the chart room, as you drew ahead of her. A. No sir.

Q. You didn't see any lights there?

A. No sir. I saw them when I was abeam of her.

Q. It is all glass in the room, though, isn't it?

A. I could not say.

Q. The front of the house is all glass?

A. The "Indianapolis" pilot house?

Q. No, the "Strathalbyn's"—

A. (interrupting) I could not say.

Q. (Continuing) —chart room house?

A. I don't know.

Q. Now, when you passed the "Flyer", how much was she ahead of the "Virginian" down here in the vicinity of Pully Point? A. Not any.

Q. You mean that if the positions of the vessels were marked on a line at right angles to the course that you would steer between Robinson's Point and Pully Point, the bow of the "Flyer" and the bow of the "Virginian" would be the same, on the same line?

A. With my position, yes sir.

Q. And how far do you say that was beyond or to the south of Pully Point?

A. That was probably a half a mile, approximately a half a mile.

Q. At the time you passed the "Virginian" and the "Flyer", how far away were you from the "Strathalbyn"?

A. Oh, about two miles, two miles and a quarter.

Q. The "Strathalbyn" was going pretty slowly that night, was she? A. Yes sir.

Q. You passed her at what time?

A. Brown's Point, seven—or 6:35.

Q. 6:35? A. 6:35 or —36.

Q. That was right at the point, was it?

A. That was right at the turn, yes sir.

Q. At Brown's Point. And you passed her at what time, coming back, at Robinson's Point?

A. 7:45—45 or 46, I ain't sure which.

Q. And she was how far to the north of Robinson's Point? A. One mile.

Q. Could you notice how far the "Virginian" was off Pully Point when she turned?

A. I could not say exactly, no sir.

Q. Did you notice how far the "Flyer" was from the "Virginian"? A. Pretty close.

Q. Did you hear the "Flyer" whistle to pass the "Virginian"? A. No sir.

Q. When you say "pretty close" about what do you mean by that, captain?

A. Well, when they rounded—well, she was off on the further side of the "Virginian", I could not tell exactly how close she was, you know. The angle they laid on from me I could not—it would be pretty hard; I know she was pretty close.

Q. Well, when you passed the "Flyer" and the "Virginian", how far was the "Flyer" away from the "Virginian"? A. I could not tell.

Q. Can you approximate it?

A. I could not even approximate it. I know it was right abeam, just the same as something like taking that paper off of this book and take them off three eighths of a mile; pretty hard to tell.

Q. How far were you from the "Virginian"?

A. About three eighths of a mile, I guess, approximately that; might have been a little under.

Q. Well, you saw the "Virginian" and the "Flyer" coming down towards you? A. Yes sir.

Q. And you are unable to say about how far apart they were? A. No sir.

Q. What time was it you said—I have forgotten—what time was it you said you passed the "Virginian" and the "Flyer"? A. About 7:54, I judge.

Q. Did you hear the "Flyer" whistle to the "Strathalbyn"?

A. I heard the "Flyer's" whistle. I don't know who she whistled to.

Q. Did you hear the "Strathalbyn's" whistle?

A. No sir.

Q. You heard the "Flyer" whistle to one boat after you passed the "Virginian" and "Flyer"? A. Yes sir.

Q. How far were you from the "Virginian" and the "Flyer" when you saw the lights mixed up together—or how far were you from the "Strathalbyn" and the "Virginian" when you saw the lights mixed up together?

MR. BOGLE: I don't think the captain testified he saw the lights mixed up together.

A. If I understand, he asked me how far I was away from them—when I noticed the "Flyer's" port side light.

Q. (Mr. Hayden) The side light and these other lights you said were closest together?

A. Well, I ran by him three minutes past—let me see—two miles and a half.

Q. What?

A. Two miles and a half, might probably have been three miles, I could not tell exactly.

Q. How many lights did you see in the nature of headlights or masthead lights?

A. I could not tell whether there was—just saw a cluster of lights together, bright lights; saw no colored lights, only on the "Flyer".

Q. How long did you notice these lights together?

A. Oh, just a glance, just opened the door and glanced out. Just the fraction of a minute.

Q. Until you heard the whistle, as I understood you

to say, captain, you did not look around to see the vessels at all after you passed the "Strathalbyn"?

A. No sir.

Q. Until you heard the "Flyer's" whistle?

A. No sir.

Q. But you did look around when you heard the "Flyer's" whistle? A. No sir.

Q. I didn't quite get it straight then. What was it?

A. I did not look back until I got to Three Tree; I heard the "Flyer" blow her whistle, but I did not look back then even—heard no reply to it, but I didn't look back.

Q. You looked back sometime?

A. At Three Tree Point.

Q. At Three Tree? A. Yes sir.

Q. Or beyond Three Tree? A. At Three Tree.

Q. Was that the time you saw these vessels' lights all mixed up together? A. I saw the "Flyer's" light.

Q. And a cluster of lights of the other vessels?

A. Yes sir.

Q. That was, then, after Three Tree or Pully Point? A. Yes sir.

Q. And you did not look after that at all, then?

A. Pully.

Q. After you passed Pully Ponit?

A. Oh, yes, I ran beyond them a couple of minutes past, I guess—

Q. (Interrupting) Were you looking back at these vessels then? A. Yes sir.

Q. So you were looking at this mixup there, whatever it was, for about two or three minutes?

A. Oh, I just glanced at it, you know; was walking backwards and forwards across the pilot house, and there was a window in the after end of the pilot house and I glanced through that every time I walked across, and just before I changed the course I opened the door and looked out. That was probably a minute or a minute and a half after rounding Three Tree.

Q. Did you blow to the "Virginian"—whistle to the "Virginian"? A. No sir.

Q. Did she whistle to you? A. No sir.

Q. While you were looking back at these lights, could you tell anything about the courses or changes of courses that were taken either by the "Virginian" or the "Strathalbyn"? A. No sir.

Q. You did not hear the report of the coming together of these two boats, did you? A. No sir.

Q. You didn't know there was a collision?

A. No sir.

Q. That is why you did not turn around, is it?

A. No, I didn't think about that—turning around.

Q. The "Flyer" was a good deal closer to the scene of collision than you were, wasn't she? A. Yes.

Q. Will you please indicate, captain, the position of the "Indianapolis" and the "Strathalbyn" between Pully Point and Robinson's Point when you passed her, going to Seattle? A. Do you want this in red ink, sir?

Q. Yes, better make it all in red ink.

A. (Witness marks with red ink) There was the "Strathalbyn" right here.

Q. Right here. You refer to a cross in red?

A. Yes.

Q. I will mark a line out from that cross in red and mark it "P" for "Penfield."

A. This is her course on here.

Q. Which one do you refer to as her course?

A. This one here I have marked northwest half north magnetic.

Q. Write "Strathalbyn" then on that. "Strath." is good enough.

A. (Witness does as requested.)

Q. Now then, that is the course of the "Strathalbyn" as you took it to be? A. Yes sir.

Q. You do not mean to say that was her absolutely accurate course, do you?

A. No sir, that is approximately.

Q. The lines marked in red between Robinson Point and Pully Point, with the letter "S" and "S" is what you testify to be the "Strathalbyn's" course; is that right? A. Yes sir.

Q. And the arrow marked in red with "I" and "I" is the "Indianapolis'" course; is that right?

A. Yes sir. I want this—these courses that I have

run off, if he was in a little closer than I have allowed him of course that would throw his course in closer to this "X", you see. I don't know how far he was off. I was practically an eighth of a mile off; he might have been a little closer than that; I don't know how close he rounded Robinson, but then that would make a vast difference in his course up here; that would run this crossing line away back here, you see, if he rounded inside of a quarter of a mile, and that is a little wide quarter of a mile that I have got there for him. If I had a pair of dividers—

Q. (Interrupting) You do not pretend this is absolutely accurate. Is your course absolutely accurate too?

A. Approximately so, yessir. I round there every trip just about an eighth of a mile.

Q. And how far from Pully Point?

A. Off there about an eighth, or three-eighths.

Q. Did not change your course on account of the "Virginian" and the "Flyer" coming down to meet you at this time? A. No sir, they were outside of me.

Q. Now then the "Indianapolis", as she came around Robinson Point and was overtaking the "Strathalbyn", was at first on the port quarter of the "Strathalbyn" and then went over to her starboard quarter?

A. Yes sir.

Q. About what position were you in when you went from her port quarter over to her starboard quarter?

A. She was about right ahead of me.

Q. Yes, but I mean how far to the north of Robinson's Point? A. How far was I?

Q. When you made your maneuver there?

A. I was probably a quarter of a mile off here, maybe a little under; pretty close to it.

Q. That would be a quarter of a mile from the "Strathalbyn" toward Robinson Point? A. Yes sir.

Q. You made that change of course after you had seen the "Strathalbyn"? A. Yes sir.

Q. Now, indicate on this chart here where you passed the "Flyer" and the "Virginian"?

A. (Witness does as requested.)

Q. Now, you made that mark on the "Indian-

apolis' " course. Of course they were not on the "Indianapolis'."

A. That is where I was.

Q. Yes. Now, I want you to mark—before we get to that we will do this: This cross that you have made on the "Indianapolis'" course is the point where you passed the "Flyer" and the "Virginian"? A. Yes sir.

Q. I will draw a line out from that and mark it "P. F. V." (marking). Now, both the "Flyer" and the "Virginian", captain, were to the west of you?

A. Yes sir.

Q. What speed does your boat make?

A. She makes fifteen knots.

Q. She was running fifteen knots this night between Robinson and Pully Point, was she? A. Yes sir.

Q. Captain, you would not say that the masthead light on the "Strathalbyn" was a poorer light than you would expect to find on a vessel that was burning oil in the lights, would you?

MR. BOGLE: I object to that. He has testified that it was.

A. Yes sir, if the lights were in shape.

Q. (Mr. Hayden) No, captain, I want to ask you if you did not testify before the—just to refresh your memory—it is sometime since you testified—

A. Yes sir.

Q. (Continuing) —before the inspectors, and ask you if you remember Captain Whitney asking you "Was his masthead light"—referring to the "Strathalbyn's" light—"any poorer than you would expect to find in a vessel that was burning oil in the lights?" And you answered "Well, I would not say"?

A. I think that is correct.

Q. You think that is correct. You think at the time you made that statement you were accurate and correct in it, do you? A. Yes sir.

Q. What way was the wind blowing at the time you were between Pully and Robinson Point?

A. If I remember correctly, it was a calm night.

Q. Well, what kind of a night was it?

A. It was a dark night, clear atmosphere—atmosphere was very clear.

Q. It was a good night to see lights, was it?

A. Yes sir.

Q. What was the nature of the night for determining distances on the water? A. It was not bad.

Q. You think you could tell distances pretty well that night, do you? A. Yes sir.

Q. What colored light is there on Robinson's Point? A. A fixed red light.

Q. A steady light? A. Yes sir.

Q. Oil-burning light? A. Yes sir.

Q. What kind of a light is on Pully Point?

A. Bright light.

Q. White light? A. White light, yes sir.

Q. Did you pass, coming up between Brown's Point and Robinson's Point, any other vessels?

A. I didn't notice any, no sir.

Q. You didn't notice the lights of any other vessels at all? A. No sir.

Q. These courses you have put down here, captain, are they compass courses or magnetic courses?

A. Magnetic.

Q. Well, that is a compass course, isn't it, a magnetic course? A. No sir.

Q. On this chart, figuring out these courses, which one of these marks on the compass of north would you be using? A. Magnetic north.

Q. Which one is that? A. It is marked there.

Q. Just show us, please, will you?

A. There is the magnetic north right here (indicating).

Q. (Mr. Bogle) The arrow.

A. The arrow, on the arrow head.

Q. (Mr. Hayden) The one that is marked with a line out from it "magnetic"? A. Yes.

Q. And that is the north that you were taking in fixing these? A. Yes.

Q. And the one with the star is the compass north?

A. No sir, that is true north.

Q. True north? A. Yes sir.

Q. Now, where was the compass north, that is anything that happens to be, according to variation and deviation of the compass?

A. According to the deviation and local attraction on ship. Sometimes it is east and sometimes it is west. Varies on different courses.

Q. I see. I think that is all now.

REDIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Captain, is the course of the "Indianapolis" which you have marked on the map by the red line "II", from Robinson Point north, the regular course of the "Indianapolis"?

A. That is approximate, yes sir.

Q. Did you change your course that night?

A. I did, yes sir.

Q. At what point?

A. At—it is marked there a mile to the northward of Robinson—to the northward and westward, marked "X".

Q. Why did you change your course there?

A. To avoid a collision.

Q. With what vessel?

A. The steamer that I found afterwards to be the "Strathalbyn".

Q. How far were you from the "Strathalbyn" when you made that change? A. Well, pretty close.

MR. HAYDEN: I think that has all been gone over on direct and cross.

A. Under a quarter of a mile.

Q. (Mr. W. H. Bogle) What lights of the "Strathalbyn" could you see at that time?

MR. HAYDEN: I object to it as immaterial and already been gone over.

A. I didn't see any light. Of course I changed my course.

Q. (Mr. W. H. Bogle) How did you know there was any other vessel in front of you?

A. I saw a dark loom, a dark object.

Q. The vessels were approaching at that time, were they? A. I was approaching him, yes sir.

Q. (Mr. Hayden) You were overhauling him?

A. Yes sir.

Q. (Mr. W. H. Bogle) Did you pass any other large cargo vessel that night on either your trip to Ta-

coma or the return from Tacoma to Seattle, except the "Strathalbyn" and the "Virginian"?

A. Not on that round trip, no sir.

Q. Indicate on the map about what your position was when you looked back and saw apparently some confusion among these vessels that you had passed?

A. Abreast of Three Tree.

Q. Abreast Three Tree, where you have marked a star on the course of the "Indianapolis"? A. Yes sir.

Q. You spoke of seeing a cluster of lights; what lights did you see?

A. They were bright lights, white lights.

Q. Did you see the light of the "Strathalbyn"?

A. No sir, I don't think so.

Q. The lights you saw then were the lights of the "Flyer" and the "Virginian"? A. Yes sir.

BY MR. LAWRENCE BOGLE:

Q. Captain, when you were off Pully or thereabouts and looked back and saw that cluster of lights had you seen the "Flyer" turn so that her port light was visible?

A. I didn't see her turn. When I looked back I saw—

Q. (Interrupting) You saw her port light at the same time? A. Yes sir.

Q. About where on the map did that cluster of lights appear to be?

A. Well, it appeared to be about half way or a little more, it might have been, I couldn't tell exactly only from the distance I had run, that is all I have gone by, when I looked back.

Q. You don't think you were beyond Pully?

A. When I looked around the first, that is where I noticed them first—Pully.

Q. Will you indicate just about where they were?

A. The "Strathalbyn" was making six miles an hour and I was making fifteen miles an hour—fifteen knots—these are nautical miles—and I passed him forty .45 or .46, I won't be sure—of course I have got that down in that other testimony there, if I had it exactly I could tell exactly, but I ain't—it was either .45 or .46, and that is ten minutes lapsed; from the time I passed

him until I got abreast Three Tree she would cover just a mile—the “Strathalbyn” would cover a mile during that time, so that would make her just about two miles from Robinson, as near as I can get to it.

Q. Captain, do you know, as a matter of fact, she was only making six miles?

A. I know she was making only six miles; that is what I looked at my clock before I rounded Robinson, I was surprised she was not making more than six miles an hour when I overtook her here, when I took her for a sail boat; I says to the quartermaster, “That looks like a sail.” He says “I guess it is that tramp.” I says “My gosh! he has got further than this.” And come to find out it was her. And then I looked at the clock and it was an hour and ten minutes since I passed her here, that I met her at Brown’s until I overtook her and passed her north of Robinson. You haven’t got to be aboard a ship to tell what time she is making. That is the way I figure it out. (Witness marking.)

Q. (Mr. Hayden) What is that supposed to be, captain?

A. That is supposed to be approximately the position of the collision.

Q. (Mr. Lawrence Bogle) The large circle here marked with a big “C” is where you think the collision took place? A. Yes sir.

Q. Now, how far did you proceed on that—

A. (Interrupting) That is a rough estimate.

Q. Your testifying as to times and distances here, it is all more or less a rough estimate, isn’t it?

A. Yes sir.

Q. How far did you continue on your course past Pully?

A. Well, probably three eighths of a mile, a minute and a quarter, something like that.

Q. And how far north of Pully do you think you were the last time you looked out there?

A. That is what I mean, that I looked out the last thing about a minute and a quarter—about three eighths of a mile.

Q. You could still see those lights back there?

A. Yes sir.

Q. When I saw the "Strathalbyn's" masthead light coming around Brown's Point at Tacoma, that light, as I understand, was passing across the stationary lights ashore? A. Yes sir.

MR. HAYDEN: Let the captain testify, will you?

Q. (Mr. Lawrence Bogle) Would that attract your attention any sooner than if the light had been coming straight toward you? A. Yes sir.

Q. Why is that?

A. Well, it is moving, it was moving across on an angle—right angle to my course, or pretty nearly so.

BY MR. W. H. BOGLE:

Q. Captain, you were asked by Mr. Hayden as to some statement you made before the inspectors, in regard to this masthead light on the "Strathalbyn". I will ask you if you did not make this statement at the same time, before the inspectors—

MR. HAYDEN: (Interrupting) I object to cross examining this witness, if that is what you propose to do.

Q. (Continuing) —"You saw her masthead light, you say?"—

MR. HAYDEN: (Interrupting) And on the ground that it is leading.

Q. (Continuing) "Captain Turner: You saw her masthead light, you say? A. Yes, I saw that; it was not extra good either. Q. Wasn't that a good light? A. No sir, it was not, it was not what you would call a bright light, it was not burning brightly." Was that your statement before the inspectors, at the time referred to by Mr. Hayden?

RECROSS EXAMINATION.

Q. (Mr. Hayden) What is the distance, captain, between Pully Point and Robinson Point?

A. Pully and Robinson?

Q. Pully and—yes, Pully and Robinson?

A. It is about three and three quarter miles; might be a fraction over, but very little. I generally call it four miles. To measure it down fine, it is about three and three quarters or seven eighths.

Q. Now, in answer to Judge Bogle you said you didn't think that you saw the masthead light of the "Strathalbyn" in this cluster of lights. You are not

sure that you did not see it, are you? A. Beg pardon?

Q. In answer to the direct question of Judge Bogle, you said when you looked back from Pully Point toward where you saw these ships' lights together, that you thought you did not see the masthead light of the "Strathalbyn"?

A. I could not tell whether it was the "Strathalbyn's" light, I would not vouchsafe for that, but I am very doubtful.

Q. You saw more than one light, though, did you?

A. I think it was very doubtful, though, that I could see her two miles off.

Q. But you saw more than one light, didn't you?

A. Yes, I saw a cluster of light.

Q. I mean more than one light up in the air too?

A. Well, I would not vouchsafe. I didn't pay much attention, only this red light of the "Flyer's" and the masthead light. The others I didn't pay much attention to, just the cabin lights.

Q. When you passed the "Strathalbyn" about a mile north of Robinson's Point, did you see her masthead light at that time? A. Yes sir.

Q. Was it burning about the same way then as it was burning when you saw it coming around Brown's Point?

A. Practically the same, yes sir; just about the same.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Was it as easy to pick up at that time? Of course at the time you saw it you were just passing the steamer, but from what you know of that—had seen of that light, what would you say as to it being an easy light to pick up of a vessel coming straight ahead.

MR. HAYDEN: I object to that as immaterial and calling for a conclusion of the witness.

A. I didn't notice his masthead light after I had passed him about a quarter of a mile. When his side light faded out, I didn't pay much attention to it after that; I didn't look to see how far you could see it. It appeared to me to be pretty low down to—lower than usual for a large vessel.

Q. Captain, are there any shore lights along Robinson Point or in at the Portage or over to the shore on the eastward?

A. Yes sir, along the shore of Vashon Island there is a lot of lights—bright lights—people living there, ranchers' lights.

Q. Were those lights as bright as the masthead light of the "Strathalbyn"?

MR. HAYDEN: I object to that?

A. A good deal brighter.

Q. (Mr. Bogle) O good deal brighter?

A. See them a good deal plainer, yes.

RECROSS EXAMINATION.

Q. (Mr. Hayden) There are no white shore lights close to Robinson's Point that you would see coming from Pully Point, are there?

A. There are two or three—three in there.

Q. Where are they?

A. One of them right close to the Point.

Q. That is the light of the lighthouse keeper on the Point?

A. No, up on the bluff here, there are two lights you see coming in from the northward.

Q. Were they burning that night?

A. I could not say. Then there is a bright light generally burns on Murray Dock; then there are a few more down here on this side, there are quite a number of lights there, if the tide is just right so that you can see them—the tide is high enough; when the tide is low down I could never make them out, but high water you can see them occasionally. Very often see a lot of lights over here; here there are quite a number over on this shore (witness indicating).

Q. Those lights on that shore, there would be no danger of mistaking them for a light on a ship that was out here between Robinson and Pully Point?

A. Some nights it keeps you guessing all right. See a bright light here (indicating).

Q. Lights they are using over there are nothing but lamps, are they, in the houses?

A. That is all, just simply lamps—kerosene lamps.

Q. Oil lamps in the houses? A. Yes sir.

Q. Have to see them through the windows—

A. (Interrupting) Yes sir.

Q. (Continuing) —of the houses? A. Yes sir.

Q. You can see the whole window then, can't you?

A. No, the light. You could if you were close enough, I guess.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) How high would you say this masthead light of the "Strathalbyn" was above the water?

A. I don't know; it was pretty low; lower than they usually have them; pretty low down; I could not tell exactly how high it was; maybe 20 feet.

Q. Above the water? A. Above the deck.

Q. (Mr. Hayden) Above the deck load?

A. Yes sir.

Q. (Mr. Lawrence Bogle) Could you approximate the distance above the water?

A. Oh, from the top of her deck load to the water could not have been over 20 feet. Not that, I guess, on the side she had the list. She had a list to starboard.

Q. The light then would be approximately 40 feet above the water? A. Yes sir.

Q. Captain, a person standing on the bridge of a vessel which was 40 feet above the water, approaching this light head on, wouldn't there be danger of mistaking that for a shore light?

MR. HAYDEN: I object to that as calling for a guess of the witness.

A. I think it would, yes sir.

Q. Would not this light of the "Strathalbyn" be in line on the course that you have shown here, with the shore light?

A. Yes sir, more so than it would if it was higher.

Q. That is, if the person looking at it was at the same level as the light? A. Yes sir.

Q. 40 feet above the water. Captain, there would be no danger of mistaking a colored light for any light ashore? A. No sir, unless it was Robinson light.

Q. (Mr. Hayden) Might be that, might it not?

A. Yes, if there was a colored light ashore it might.

MR. HAYDEN: That is all.

Q. (Mr. Lawrence Bogle) How is that Robinson light as to brightness?

A. It is a pretty bright light, yes sir.

Q. How far can it be seen?

A. Well, can see it a long ways, you can see it sometimes about seven or eight miles some nights.

Q. Captain, do you think there was any danger of mistaking the port light of the steamer "Strathalbyn"—confusing that with Robinson light on Robinson Point?

MR. HAYDEN: I object as calling for a conclusion of the witness. He surely cannot know what Mr. Duffy is going to confuse.

A. I would not say.

MR. LAWRENCE BOGLE: We object to the form of that—stating something into the record.

(Witness excused.)

MR. HAYDEN: Let the record show that I would like to have Mr. Duffy's testimony taken today while he is here.

MR. LAWRENCE BOGLE: I object to that. We can take Mr. Duffy's testimony any time we want to, and I object to Mr. Hayden trying to get that into the record, if he thinks he is going to gain any unfair advantage by the fact that Mr. Duffy is here. We can take his testimony any time we want. I know of nothing that makes it imperative on us to take his testimony today. I never tried to dictate to you as to when you would take your testimony.

An adjournment was here taken until some date to be hereafter agreed upon by counsel.

(Filed Oct. 15, 1912.)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective attorneys, that depositions may be taken in behalf of the respective parties before Earl E. Richards, a Notary Public, at room 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m. on October 28, 1912, and may be transcribed and read in evidence in behalf of the respective parties with the same effect

as though said depositions had been taken before the United States Commissioner to whom the taking of testimony in this cause was referred.

The signatures of the witnesses to the testimony as transcribed are hereby waived, and all other objections as to the time and manner of taking this deposition are hereby waived.

HUFFER, HAYDEN & HAMILTON,
Proctor for Libelant,
BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Respondent, Claimant
and Cross-Libelant.

DEPOSITIONS OF PETER WICK, ET AL.

BE IT REMEMBERED, that on October 28, 1912, at room No. 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m., before me, Earl E. Richards, a Notary Public in and for the state of Washington, appeared Mr. W. H. Hayden (of Messrs. Huffer, Hayden & Hamilton), proctor for libelant, and Mr. W. H. Bogle and Mr. Lawrence Bogle (of Messrs. Bogle, Graves, Merritt & Bogle), proctors for respondent, claimant and cross-libelant;

WHEREUPON the following proceedings were had:

PETER C. WICK, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary, to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name?

A. Peter C. Wick.

Q. What is your business?

A. I am mate of the "Indianapolis", sir.

Q. How long have you been mate of the "Indianapolis"? A. About thirteen months.

Q. Were you mate on the "Indianapolis" on the night of January 12th, 1912, the night of the collision between the steamer "Strathalbyn" and the "Virginian"? A. Yes sir.

Q. Did you pass the steamer "Strathalbyn" on that night? A. Yes, about five minutes after ten.

Q. Where was she at this time?

A. She was laying off Robinson Point.

Q. Headed in what direction?

A. Headed in a southerly direction, off towards the other shore.

Q. What first attracted your attention to her, Mr. Wick?

Q. (Mr. Hayden) What was this five minutes after ten—

A. (Interrupting) About the time—

MR. HAYDEN: I object to this testimony on the ground that it is incompetent, irrelevant and immaterial.

A. It was a bright light, sir.

Q. (Mr. Lawrence Bogle) Where was this bright light?

A. Oh, it seemed kind of high, to me; I could not make out what it was at first.

Q. What kind of a light was that?

A. Kind of a flickering light, unsteady light.

Q. Did it appear to be a stationary light?

A. It seemed to be moving, kind of like somebody waving with it, or flickering. I didn't know yet what it was before I came up closer, and I blew one whistle then and was answered with one whistle.

Q. At the time you saw this flickering light, how far were you from the "Strathalbyn"?

A. Oh, I don't know; about 600 feet, I guess.

Q. Did you make out the vessel?

A. I could see it looming up then, but I didn't know yet what kind of a vessel it was. I took it to be a mast-head light. I was looking to see if I could see any side lights, but when it loomed up and I blew one whistle I saw I could pass her on my port side and he answered with one and then I knew I was all right.

Q. What was the appearance of this vessel on the water, was it easy to pick her up, or hard?

MR. HAYDEN: I object to this as calling for a conclusion.

A. Oh, to pick her out?

Q. Yes.

A. Well, we came that close, it was easy to pick her out; it was about 150 feet off her course when we

passed her; I had to come that close; I would have went on shore if I came any closer.

Q. Was she lying pretty low in the water?

A. She was laying pretty low, sir; that is, her stern was sticking well up.

MR. HAYDEN: Let the witness testify and don't ask leading questions.

Q. (Mr. Lawrence Bogle) What was her appearance?

A. Well, she was lying low in the water, with her—forward part of her was laying low. I could see a life-boat swung over the side.

CROSS EXAMINATION.

Q. (Mr. Hayden) You say you saw the loom of her hull about at least 600 feet away from her?

A. Oh, yes, about that, I guess.

Q. Which way was the "Strathalbyn" headed at the time you saw her?

A. She was—well, we were steering at the time southeast by—southeast three quarter south and our course is south by west quarter west from Robinson to Dash Point.

Q. How is that?

A. South by west quarter west from Robinson to Dash, and I would think she was about—she must have headed about south or south by east, I guess.

Q. South or south—

A. (Interrupting) South by east; I didn't take any pains—

Q. (Interrupting) That is, the "Strathalbyn" was heading about south or south by east?

A. That is the way she appeared to me, yes.

Q. And you were heading how?

A. Well, we came around to south by west quarter west, but I had to hold her in more, I came in to about—been nearly up to southwest before I got clear of her. I would not clear her with that course we used to steer, I had to hold her in as much as possible to get clear by her. We could not get any closer in without running on the spit there. I believe it went up to southwest about.

Q. Did you pass between the "Strathalbyn" and the— A. (Interrupting) And the Point.

Q. And what point? A. Robinson Point.

Q. Between the "Strathalbyn" and Robinson Point?

A. Yes sir.

Q. How far were you off Robinson's Point when you passed the "Strathalbyn"?

A. Well, I don't know, an eighth of a mile, I guess.

Q. Oh, yes. The vessels were close over to Robinson Point, then, when you passed?

A. Very close. I would never dare to come that close any more, but it happened to be pretty high water. I was scared we would run on the spit there, but I could not do anything else; she had gone too far, I could not come around on the outside.

Q. Well, this light that you say you saw, you took that to be the masthead light?

A. When I first saw her, yes.

Q. Well, did you take it to be any other kind of a light afterwards?

A. Well, I blew one whistle—I saw I could get that light on my port bow and I blew one whistle and when he answered that one then I knew I was—

Q. (Interrupting) But you say when you first saw this light you took it to be the "Strathalbyn's" head-light? A. That is, I don't know—

Q. (Interrupting) Did you ever think it was anything else?

A. I did, it was something else; in fact I didn't know what it was first.

Q. You don't know what it is now, do you?

A. I know it now, because when I saw the boat I knew what it was; after we passed her, then I knew what it was.

Q. You say it was a bright light?

A. It was a bright light and it was kind of flickering, moving.

Q. You mean flickering—it was waving?

A. Waving, yes.

Q. It was not going up and down, the light was not? A. No, kind of this way (witness illustrating).

Q. But the light itself was not going up and down?

A. No.

Q. The light was steady?

A. Kind of a swinging light.

Q. Like a lantern swinging?

A. Yes, that is what it was.

Q. How much was that swinging, would you say?

A. Oh, I don't know, not very much; I don't remember it, in fact, how much it was, but I saw it was not steady. I said to the lookout too "I can't make out"—

Q. (Interrupting) I don't care what you said to the lookout. A. Oh.

Q. Now, you naturally would not see that light, because you were coming up astern of the vessel until you got abeam of her, would you?

A. I don't know. When I first saw it it was right ahead of me, this bright light.

Q. Yes, but I say—when you first saw the light it was right ahead of you?

A. Yes, and then I held her off a little, took it on my port bow.

Q. Yes. But you were coming from Seattle at that time? A. Yes sir.

Q. And as the "Strathalbyn" was headed southward—

A. (Interrupting) She was heading southward, yes.

Q. And you were headed southward—

A. (Interrupting) We were steering southeast three quarters south.

Q. Yes. So that you would be overtaking the "Strathalbyn" on her course?

A. Well, we would be overtaking her, of course.

Q. And of course you can't see the masthead light of a vessel except it is two points abaft the beam?

A. No sir, that is right.

Q. So that you would not see that masthead light until you got in a position where she would be two points abaft the beam at least?

A. That is right, sir; that is right.

Q. So that you might get pretty close to her with-

out seeing—while you were overtaking her, without seeing the masthead light.

MR. LAWRENCE BOGLE: I object to the form of it. You can ask him whether he did see it or not.

MR. HAYDEN: He said he saw it.

A. I saw that bright light, yes, over the stern—that waving light.

Q. (Mr. Hayden) You saw that over the stern?

A. Well, it was—I didn't know it was over the stern before I came closer up.

Q. But the light that you saw that was waving was over her stern?

A. Well, it was on the after part of the ship. I don't know exactly where it came from, but that was the first thing I saw.

Q. You passed then on the starboard side of the "Strathalbn"? A. (Interrupting) Yes sir.

Q. (Continuing) —going by. That is all you know about that vessel, is it? A. Yes sir.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) When you saw this flickering light, was it above—

MR. HAYDEN: (Interrupting) Excuse me a moment. He said it was a waving light, he said the light itself was steady.

MR. LAWRENCE BOGLE: I don't think that makes any difference.

Q. (Mr. Lawrence Bogle) This light that you saw, was it above you or below the horizontal line of where you were standing? A. It was above, it looked high to me.

Q. Above where you were standing?

A. Yes, it looked higher than where I was standing, when I first saw it; that is the reason I took it to be some boat's masthead light—it looked so high.

Q. And afterwards you passed on the starboard side of her?

A. On the starboard side we passed, yes, of her.

Q. Did you afterwards see her masthead light?

A. I saw it and the green light.

Q. How was the appearance of this masthead light?

A. It looked kind of dim, nearly out, the way it looked to me; but the green looked pretty bright.

Q. The masthead light was dim?

A. Dim, yes sir; in fact it looked like it was nearly out.

Q. Were you ever in a position where you were directly ahead of this vessel or within a point and a half or two points off her bow? A. No sir.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Now, when you speak about the masthead light, what light do you mean by that, Mr. Wick? A. About the masthead light, sir?

Q. Yes. A. I mean a bright light.

Q. Well, what light do you mean by that? I don't quite understand. Do you mean the light that is most far forward on the vessel?

A. Yes, the light up on the mast.

Q. Yes. I want you to tell me how many lights did you see burning on this vessel that night?

A. I saw this light I spoke about first, this flickering light, and I saw the green light and the masthead light as we came up.

Q. You saw three lights then?

A. Well, after we got by her.

Q. Well, now, what light do you call the second white light that you say you saw or just mentioned?

A. Well, I believe it looked like a light showing out through a port hole in some room or something.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) How close did you say you passed to this vessel?

A. I don't know, between a hundred and two hundred feet, I guess.

Q. It was at that time that you saw the masthead light?

A. When we came by her, yes. Of course we were holding away from her as we passed by her—holding away from her all the time.

(Witness excused.)

EARNEST HUGH PHILLIPS, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn

by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State you full name, Mr. Phillips?

A. Ernest Hugh Phillips.

Q. What is your business?

A. Quartermaster on the "Indianapolis".

Q. How long have you been quartermaster on the "Indianapolis"? A. About sixteen months.

Q. Were you quartermaster on the "Indianapolis" on the night of January 12th, 1912? A. Yes sir.

Q. The night of the collision between the "Strathalbyn" and the "Virginian"? A. Yes sir.

Q. The "Indianapolis" was on the run between here and Tacoma? A. Yes sir.

Q. Where did you pass the "Strathalbyn" the first time on this night?

A. Why, about—well, the other side of Brown's Point or nearly abeam of it.

Q. Nearly abeam of Brown's Point? A. Yes.

Q. About what time was that?

A. Well, let's see—let's see, that is I think along 6:29, 6:30, about that time.

Q. You were headed for Tacoma?

A. For Tacoma, yes.

Q. Which way was the "Strathalbyn" coming?

A. Well, she was swinging towards Robinson's Point.

Q. She was swinging off Brown's for Robinson?

A. Coming around Brown.

Q. What lights did you see on the "Strathalbyn", if any, at that time?

A. Well, the masthead light and the green sidelight and two lights in her chart room—chart house.

Q. When did you first see her masthead light?

A. When Captain Canfield called my attention to it; she was about—I should say about an eighth of a mile or so away.

Q. When did you first see her green light?

A. Well, I guess about a minute or so after that.

Q. A minute or so. About how far away was she at the time?

A. Well, I don't know, a little less than an eighth of a mile; she hadn't come much closer then.

Q. What was the bearing of this green light when you first saw it?

MR. HAYDEN: I object to this as all immaterial.

A. Well, about four points off our bow.

Q. (Mr. Lawrence Bogle) Which bow.

A. The starboard bow.

Q. What was the appearance of that green light, Mr. Phillips?

MR. HAYDEN: I object to that as immaterial.

A. The appearance?

Q. (Mr. Lawrence Bogle) Yes, was it a bright light or a dim light?

A. Oh, it didn't appear—it appeared dim, because I had to look at it through the glasses; I didn't see it with the naked eye at any time.

Q. You didn't see it at any time with the naked eye? A. No sir.

Q. About how close did you pass the "Strathalbyn"? A. At the nearest point?

Q. Yes, when you passed abeam of her?

A. Well, we wasn't much closer than an eighth of a mile, we hadn't come any closer; that was about as close as I saw her.

Q. You could not see the green light at that distance with the naked eye? A. No sir.

MR. HAYDEN: That I object to and move to strike it out.

Q. (Mr. Lawrence Bogle) Mr. Phillips, after the captain had called your attention to the masthead light, were you looking for the side lights after that?

MR. HAYDEN: Objected to as leading.

A. I always do that—look for the side lights when I see a vessel.

Q. (Mr. Lawrence Bogle) As I understand it, you could not make them out.

MR. HAYDEN: I object to that as leading.

A. No sir.

Q. (Mr. Lawrence Bogle) What was the appearance of this masthead light, Mr. Phillips?

A. Well, that was not a bright light; about like

some of these boats around here, they don't carry very bright lights.

Q. Would you say that was a bright or a dim light?

MR. HAYDEN: I object to that as leading and suggestive.

A. Well, it was not exactly dim; it was not bright either.

Q. (Mr. Lawrence Bogle) When you saw this light was it coming toward you or moving across your course? A. Across the course.

Q. Were there any lights in the background of Tacoma, stationary lights across which this light was moving?

A. Well, there was lights around Old Town, in that direction, about across or back of her masthead light, at the time that I saw it.

Q. They would be moving across that light, would they? A. Yes.

Q. Those were the only lights you saw passing her at Tacoma? A. Yes sir, the only ships lights.

Q. Did you pass the "Strathalbyn" again on this night? A. Yes, about a mile north of Robinson Point.

Q. About what time was that?

A. Well, I should say about 7:45 or six, about five or six minutes this side of Robinson Point. We generally always get there at 7:40 on our schedule.

Q. Were you meeting at this time or passing her?

A. Overtaking her.

Q. You were overtaking the "Strathalbyn"?

A. Yes sir.

Q. What attracted your attention to the "Strathalbyn"?

MR. HAYDEN: I object to that as immaterial.

A. Well, Captain Penfield called my attention to it. He saw her first. He thought it was a sail. I didn't see any lights.

Q. What do you mean by that?

A. Well, a sailing vessel don't carry any bright light astern; the vessel overtaking, they flash her stern light.

Q. This vessel had no stern light then?

A. No sir, no light.

Q. How close were you to this vessel, the "Strathalbyn," before you made her out?

A. I was pretty close, I would not say how close; I would not say more than a couple of ship lengths.

Q. Which side did you pass her on?

A. Starboard side.

Q. Did you see any other light in passing her?

A. Well, I saw those two lights again out of her chart house when the green light opened up.

Q. Where were you when you saw these two lights out of the chart house?

A. Well, we were about abeam of her then. Saw the green light first.

Q. How far off were you when you saw that green light?

A. Well, about between 150 and—I should say between 150 and 250 yards.

Q. What was the appearance of that green light?

A. Appeared bright.

Q. Brighter than when you passed her at Robinson's?

MR. HAYDEN: I object to that as leading and suggestive.

A. At Brown's?

Q. (Mr. Lawrence Bogle) At Brown's, yes.

A. Yes, it was better than when we passed her at Brown's Point. I saw it at a different angle.

Q. What do you mean by that?

A. Well, we were coming up astern of her this time, and the other time she was crossing our bow or a little bit off the starboard bow.

Q. Did you watch this light as you passed the "Strathalbyn"?

A. I watched it until we got abeam—a little bit abaft the beam, began to close out and I didn't watch it any more.

Q. You say it began to close out?

A. Yes sir, get dim.

Q. About what was the bearing of that light when it started to close out and get dim?

A. Well, I should say about a point abaft our beam—two points abaft the beam.

Q. Two points abaft of your beam?

A. Of our beam, yes sir.

Q. Did you see the masthead light at this time?

A. No sir, I never took any notice of her masthead light, that I remember now.

Q. Did you watch these lights after you got any considerable distance ahead of her, did you look back?

A. No, she was—until she bore to two points abaft her beam; I don't know just how far ahead of her we were then.

Q. Did you take any further notice or look back after that?

A. Why, I looked back after we had got down towards Three Tree Point, I looked back a few times. Captain Penfield was looking back all the time.

Q. Why were you looking back, Mr. Phillips?

MR. HAYDEN: I object to that as leading and immaterial.

A. He had been talking about her lights being deceiving, that some ship was liable to butt into her.

MR. HAYDEN: I move to strike that out as hearsay and immaterial.

Q. (Mr. Lawrence Bogle) Did you see any other vessel? A. See any other vessel?

Q. Yes, approaching?

A. Well, saw two vessels approaching. One of them I took to be the "Flyer" and another one the American-Hawaiian line, I don't know what one.

Q. Where were those vessels?

A. They were off her port side. We seen them as soon as we got around Robinson Point.

Q. About where did you pass those two vessels?

A. Oh, about three quarters of a mile south of Three Tree, where we usually pass the "Flyer".

Q. What was your course after passing Three Tree?

A. Did you say where we usually meet the "Flyer"? (Last question read.)

A. After passing Three Tree? Well, it was northwest three eighths north as we steered there for three or four minutes. Regular course was northwest three quarters north.

Q. You didn't steer your regular course on this night? A. Well, it ran by the course.

Q. Why did you do that?

A. Well, he was watching the ship. He says "There is liable to be a mixup" and he didn't want to shut their lights out.

MR. HAYDEN: I move to strike out that, that he thought there would be a mixup.

Q. (Mr. Lawrence Bogle) What was the appearance of this vessel on the water as you passed her at Robinson Point or off Robinson Point—north of Robinson Point?

A. Well, I don't know just how you mean. Do you mean whether we could see her very well?

Q. Yes.

A. No, not until we came up pretty close to her, we couldn't make out her hull until we got up close; there was no lights burning and it was a dark night.

Q. What kind of a night was it?

A. Clear dark night.

Q. A clear dark night?

A. Up to that time. I think there was a little drizzling rain after we left Seattle.

Q. Was it hard to see objects on the water?

A. Without lights, yes sir.

Q. In your opinion, did this vessel present a deceiving appearance?

MR. HAYDEN: I object to that as leading and suggestive.

A. Yes sir.

MR. HAYDEN: And calling for a conclusion, and indefinite.

Q. (Mr. Lawrence Bogle) Did you anticipate that there would be any trouble there?

MR. HAYDEN: I object to that as immaterial.

A. Well, I did, but I didn't say anything about it. I was going to say something about I thought the "Strathalbyn" should—

MR. HAYDEN: (Interrupting) I object to that as immaterial.

A. I was going to say that I should think that the pilot on the "Strathalbyn"—I didn't know that it

was the "Strathalbyn" then, but that ship—ought to port and get clear of the other two. Captain Penfield was busy watching them, so I didn't want to interfere.

Q. Have you ever been on a vessel where they used the oil lights? A. Yes sir.

Q. Were these lights on the "Strathalbyn" as bright as the ordinary oil light?

MR. HAYDEN: I object to that on the ground that he has not shown he is qualified to testify as to other oil lights.

Q. (Mr. Lawrence Bogle) I will ask you if the lights on the "Strathalbyn" were as bright as the ordinary oil lights upon the vessels upon which you have worked which carried oil lights?

MR. HAYDEN: Same objection.

A. No sir, except when they were abeam.

Q. (Mr. Hayden) Except what?

A. When they were abeam, we could see them abeam or abaft the beam.

Q. (Mr. Lawrence Bogle) Meeting the "Strathalbyn" off of Brown's Point, had your lookout reported any lights prior to the time the captain called your attention to this? A. Well, I don't know—

MR. HAYDEN: (Interrupting) I object to that as hearsay.

A. I don't know. I didn't hear any report.

Q. (Mr. Lawrence Bogle) You didn't hear any report? A. No sir.

CROSS EXAMINATION.

Q. (Mr. Hayden) Mr. Phillips, what were you doing on the "Indianapolis" on this night?

A. Steering.

Q. You were at the wheel? A. Yes sir.

Q. That occupies most of your attention, doesn't it, when you are at the wheel?

A. Well, not on that boat, not so much, because she steers steady.

Q. And you had plenty of time, then, you mean, to look around and pay attention to other things that are going on?

A. While we are on a straight course and are not

near the points, she goes quite a while, three or four minutes at a time.

Q. When you first saw the "Strathalbyn" you were between Dash Point and Brown's Point?

A. Yes, between the two points, close to Brown.

Q. You were getting in close to shore then, weren't you? A. Yes sir.

Q. That would be a time when you were required to pay more attention than almost any other place along the line, wouldn't it? A. Yes sir.

Q. And you were paying attention to your steering, I suppose, at that time?

A. Well, I was looking ahead.

Q. Yes.

A. Was steadyng her up on a light ashore and kept her there—

Q. I suppose that is the reason you didn't see the vessel at the same time Captain Penfield saw her, and that he called your attention to it because you were paying attention to your steering, isn't it?

MR. LAWRENCE BOGLE: I object to the form of that question.

A. He called my attention to it all right, yes sir.

Q. (Mr. Hayden) You didn't see it until he called your attention to it? A. No sir.

Q. And when he says he saw her over a mile there, she must have been coming quite a little while before he called your attention to it?

MR. LAWRENCE BOGLE: We object to that.

A. I don't know.

MR. LAWRENCE BOGLE: The witness does not know what Captain Penfield testified to.

MR. HAYDEN: I am telling him.

MR. LAWRENCE BOGLE: Well, you are not telling him correctly.

MR. HAYDEN: Well, I will take your challenge on that.

MR. LAWRENCE BOGLE: You are examining this witness, go ahead and examine him.

MR. HAYDEN: Wait a minute, let's see whether I am telling him incorrectly.

MR. LAWRENCE BOGLE: You told him what

Captain Penfield's testimony will show, and we object to that testimony now at this time and at this place. If you are examining this witness, examine him upon his own knowledge and not upon what Captain Penfield testified to.

MR. HAYDEN: That is what I have been trying to do all the time.

MR. LAWRENCE BOGLE: That is what you haven't been trying to do.

MR. HAYDEN: Trying to get you to do, Lawrence.

Q. (Mr. Hayden) All right, then. The first you knew about the "Strathalbyn" then being ahead of you was when Captain Penfield called your attention to it?

A. Yes sir.

Q. And at that time she was how many points off your bow? A. I should think about four.

Q. About four. And she was about an eighth of a mile away from you at that time, too?

A. Yes, about an eighth of a mile.

Q. And what course did you say you were steering at that time?

A. Well, I didn't say, but we were steering south by west half west.

Q. That is between Dash Point and—

A. (Interrupting) Between Dash Point and Brown's Point.

Q. Do you make any difference in your course between Robinson's Point and Dash Point?

A. Yes sir. Well, now, south by west, that is the course from Robinson's to Dash. South three quarters west from Dash to Brown's.

Q. So that you were steering a south three quarters west course when you first saw her? A. Yes.

Q. You blew a whistle to her, I suppose?

A. No sir.

Q. Did not give any whistles? A. No sir.

Q. Far enough away so that there was not any need of whistles?

A. Well, that is up to the judgment of the captain.

Q. You say you saw at that time the masthead light and the green light—

MR. LAWRENCE BOGLE: (Interrupting) At what time?

Q. (Continuing) —and two lights in the chart room?

A. I saw the masthead light and two lights in the chart room when he called my attention to her, but I didn't see the green light then.

Q. Oh, I see. Then you ran into Tacoma, I suppose? A. Yes.

Q. And came back again. The weather was clear, that is the air, atmosphere was clear all during that night until after you passed Pully Point on your way back to Seattle, wasn't it? A. Yes.

Q. You never were so that you had an opportunity to see the red light on the "Strathalbyn", were you?

A. No sir.

Q. What is the reason that you changed your course at Pully Point going north?

A. Pully Point? Why, he does that on account of foggy weather, he runs that course, and, as I understand, he follows that up until he gets about—

MR. LAWRENCE BOGLE: (Interrupting) I object to that unless the witness himself states the course or knows why it is such of his own personal knowledge.

MR. HAYDEN: I asked him why.

(Answer read.)

A. (Continuing) —until he gets a four or six-second echo.

Q. (Mr. Hayden) You mean by that he gets an echo that takes four or six seconds to come back to him off of the bank there after he blows his whistle?

A. Yes, when he hauls off a half a point.

Q. And about where does he catch that echo?

A. Well, according to the times; sometimes he gets it south of Brace Point and sometimes abeam of it.

Q. When you are on that course you can see Robinson's Point all the time, can't you?

A. Well, I never looked back to see the point.

Q. Never looked back to see whether you could or not. Why was the course you say you take from Pully Point in towards Brace Point?

A. Northwest three quarters north.

Q. (Mr. Lawrence Bogle) Where is Brace Point?

Q. (Mr. Hayden) Half way between Alki, isn't it, and Robinson, about?

A. No, half way between Alki and Pully.

Q. I mean Alki and Pully, yes. Now, you say the captain held off. Where does he change his course ordinarily at Pully Point going north?

A. As soon as the light is abeam.

Q. As soon as the light is abeam, and how long did he run before he changed his course on this evening after he passed Pully Point light abeam?

A. Oh, three or four minutes. That would be about three quarters of a mile, three quarters or a mile.

Q. You didn't look around?

A. I looked around, I said, but I didn't see the lights in a cluster; I looked around three or four times.

Q. Well, what lights did you see when you looked around?

A. I saw the range light of the "Flyer" and the stern light—some lights on the "Virginian".

Q. And what other lights?

A. I didn't notice any other lights.

Q. Didn't you see the "Strathalbyn's" headlight?

A. No sir.

Q. Didn't see that? A. No sir.

Q. You didn't notice it, you mean?

A. I didn't notice it.

MR. LAWRENCE BOGLE: He means he didn't see it—

A. (Interrupting) I didn't see it.

MR. LAWRENCE BOGLE: That is what he testified to.

Q. (Mr. Hayden) Now, did you see any other light on the "Strathalbyn" at that time—did you notice any other light on the "Strathalbyn" at that time?

A. No sir, all I saw was the "Flyer's" and "Virginian's" light.

Q. That is all you saw. Was the "Flyer" and the "Virginian" about in the line so that they might have obstructed the "Strathalbyn" from your course?

A. Oh, I don't know. I don't know where the

"Strathalbyn" was then; I could not say whether they were in line or not.

Q. Could you see Pully Point light when you looked around or did you see it?

A. No sir, because Pully Point light was on our starboard side and I was looking out on the port side.

Q. Did you see Robinson's Point light?

A. No sir. I was on the starboard side of the pilot house; Captain Penfield was over on the port side, and he had a view of it and I could only see—I could not quite see as many points abaft as he could.

Q. You didn't hear any whistles, I suppose, blown between the "Strathalbyn" and the "Flyer"?

A. There was one whistle blown. I don't know who blew that. I suppose it was the "Flyer", it sounded like her whistle.

Q. It sounded like the "Flyer's" whistle? A. Yes.

Q. You heard the "Flyer's" whistle then?

A. I suppose it was the "Flyer's" whistle.

Q. And you only heard one whistle?

A. One whistle, yes.

Q. That is all?

A. After we had passed them.

Q. Now, you said you saw a light at one time a little bit off the starboard bow; what light was that and when was that?

A. Well, I don't know what you mean now.

MR. LAWRENCE BOGLE: I don't remember that testimony.

Q. (Mr. Hayden) I say you said you saw a light of the "Strathalbyn" a little bit off the starboard bow. Where was that when you first saw it?

MR. LAWRENCE BOGLE: I don't remember that testimony.

A. Her bright light.

MR. LAWRENCE BOGLE: Ask him if he did testify to that.

MR. HAYDEN: I won't ask him; that is what he said.

A. I saw the "Strathalbyn's" light at Brown's Point the first time I saw it.

Q. (Mr. Hayden) You said you saw it a little bit

off the starboard bow when you first saw it. Do you remember where that was?

MR. LAWRENCE BOGLE: We object to that.

A. Her masthead light, yes, and those two lights in the cabin; that is when I said she was about four points off the bow.

Q. That is what you meant by a little bit, is four points? A. Well, three or four points, yes sir.

Q. Was that what you mean by a little bit? I just want to get the record straight, Mr. Phillips, that is all.

MR. LAWRENCE BOGLE: I object to the question. I don't think he testified to that.

Q. (Mr. Hayden) All we want is the truth here, Mr. Phillips, and it is all I want?

A. Well, that is all I intend to give.

Q. Yes, that is all I expect you to give, and I am not trying to catch you or trip you in any way. I just want to know what you mean by it.

A. Well, I could hardly call that a little bit.

Q. Well, I want to know what you mean by a little bit then, just give me the truth of it exactly as it was.

MR. LAWRENCE BOGLE: Ask him if he did testify to that. I don't think he did.

A. Well, about three points. Say that is about three points off the starboard bow.

Q. (Mr. Hayden) That is what you mean when you say a little bit off the starboard bow?

A. Well, I would not call that a little bit. I should not think more than a point or two points would be a little bit.

Q. How fast does the "Indianapolis" travel?

A. The "Indianapolis" makes about a knot in four minutes; fifteen knots an hour.

Q. What time on this night did you pass Pully Point or have Pully Point abeam?

A. At what time?

Q. Yes? A. What trip?

Q. Well, on the trip—

A. (Interrupting) Going to Seattle, the last trip?

Q. The last trip out, yes.

A. Oh, I don't know just what time.

Q. You don't remember that?

A. I should say about—

Q. (Interrupting) Do you remember, Mr. Phillips?

A. Oh, I didn't look at the clock, no sir.

Q. I only wanted it if you remembered. Did you look at the clock when you passed Robinson's Point going back?

A. Well, I generally always look at it when I got around the Point.

Q. But do you remember what it was now?

A. No sir, I don't know the exact time. I should say 7:40, because I know when we leave on time we make it at 7:40.

Q. Yes, that is your ordinary way of going?

A. Yes.

Q. About the ordinary way.

A. We generally always go—

Q. (Interrupting) How long does it take you to run between Robinson's Point and Pully Point?

A. Oh, sixteen minutes, anywhere from fifteen to seventeen minutes, according to the tide.

Q. What course do you take ordinarily from Robinson's Point to Pully Point, going north?

A. At that time we used to steer northwest three-eighths north.

Q. At that time? A. Yes sir.

Q. Are you still on the boat? A. Yes sir.

Q. You make a difference—

A. (Interrupting) Well, different captains steer different courses, they don't all steer alike.

Q. At that time you steered what?

A. Northwest three eighths north.

Q. And what do you steer now?

A. Well, Captain Coffin steers northwest five eighths north sometimes, sometimes northwest a half north, according to the tide. He usually keeps in close to Pully Point.

Q. Captain Murray is on her now, isn't he?

A. No, Captain Coffin. Murray is on the "Chippewa".

Q. How long after you had passed the "Strathalbyn" was it before you came up to the "Flyer"—the time—do you remember?

A. Well, about—say about—run about two miles, about eight minutes.

Q. Run about how long?

A. About two miles, about eight minutes—seven or eight minutes.

Q. Are you quite sure that you did not pass the "Strathalbyn"—I mean the "Virginian" and the "Flyer", about abreast of Pully Point.

A. To the southard of Pully Point.

Q. Weren't you about abreast of it? A. No sir.

Q. What?

A. No sir. Good three minutes to the southard of Pully Point, very seldom ever been abeam of Pully—

Q. (Interrupting) If the "Flyer" had been a little delayed you would have been passing about abreast of Pully Point, if she had been three minutes delayed you would have been passing about there, wouldn't you?

A. Yes sir, if she had been three minutes late.

Q. Are you figuring here now where you passed her basing your recollection now upon where you usually pass her, or upon your recollection of it as you actually passed her that night?

A. According to where we actually passed her that night.

Q. That is what you mean now? A. Yes sir.

Q. After you passed the "Strathalbyn" to the north of Robinson's Point you did not look back at any time to see whether or not you could see her lights, did you?

A. Well, I looked back once, I think, out of the rear window.

Q. And that is the time that you saw the green light? A. The last time I saw her.

Q. Yes. A. Yes. Yes.

Q. The green light then you say was burning brighter than it appeared to be burning down off Brown's Point? A. No sir, I didn't say that.

Q. Didn't you say that it seemed to be burning brighter because you came onto it at a different angle?

A. No sir, I said that it appeared to be burning brighter when we got abeam of it.

Q. Off of Robinson's Point?

A. Off Robinson's Point, yes.

Q. Then it appeared to be burning when you passed her down near Brown's Point?

A. I said yes because I saw it at a different angle, but when I looked aft at one time it did not appear to be burning as bright as it did when we were abeam of it.

Q. And when you passed the "Strathalbyn" going north about Robinson's Point, what maneuvers did you make by going by her?

A. We ported our helm a half a point to clear her; that is the only maneuvers we made.

Q. Ported your helm a half a point? A. Yes.

Q. And went over on her starboard side then?

A. On her starboard side, yes.

Q. You were then coming up under her port quarter, would you be?

A. Well, I would not say her port quarter, no sir. About astern. She was crossing her bow.

Q. Had you taken your course for Pully Point from Robinson's Point before you got to the "Strathalbyn"? A. Yes.

Q. Your regular course?

A. Yes, quite a little before.

Q. Had gone on your regular course, had you?

A. Yes sir.

Q. And then she was holding off more to the westward of your regular course—the "Strathalbyn" was?

A. Yes sir.

Q. Probably making a wider swing around Pully Point?

A. I suppose she was probably making a wider swing around Pully.

Q. But your courses were practically parallel, weren't they? A. Yes.

Q. Then you must have come up—if she was making a wider swing, you must have come up then on her port quarter; is that right?

A. Well, when we first rounded the Point we probably were, but by the time we caught up to her we were almost directly astern of her.

Q. And then you ported your helm a quarter of a point? A. A half point.

Q. A half a point, and were off onto her starboard and passed her? A. Yes.

Q. At that time did you notice the "Flyer" making any maneuvers around the "Virginian"?

A. No sir.

Q. You did not notice the "Flyer" coming up under the port quarter of the "Virginian" and then swinging over and coming out on her starboard side?

A. No sir. I saw both the "Virginian" and the "Flyer's" lights.

Q. But you did not notice that maneuver?

A. No sir, no maneuver.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Didn't you testify that you passed the "Flyer" and the "Virginian" about three quarters of a mile south of Pully? A. Yes sir.

Q. What was the position of the two vessels at the time, was the "Virginian" between you and the "Flyer"? A. Yes sir.

Q. Were you paying any particular attention to their maneuvers?

A. Well, I looked at them because I thought maybe the "Flyer" was trying to race the "Virginian"; trying to see if she was gaining any. I know they are both fast boats.

Q. Just what did you testify as to the green light of the "Strathalbyn" when you passed her north of Robinson Point? I wish you would make that clear.

MR. HAYDEN: I think the record shows what he testified to. I have not any objection to his repeating it again, except that I want the same objection that I have had there, as immaterial.

MR. LAWRENCE BOGLE: You seemed to understand it a little bit different from what I did.

MR. HAYDEN: Well, the record will show.

A. Well, I saw her lights when they first opened up, I should say—I don't know exactly whether two points abaft her beam or not.

Q. (Mr. Lawrence Bogle) The lights—what lights do you mean? A. Her green light.

Q. Her green light?

A. Yes. Captain Penfield is the one that talked

about it first. He said "The carpenter must have touched up her lights".

MR. HAYDEN: Look here, Mr. Phillips, you haven't any right, in a lawsuit, to say what somebody else has been talking to you. I move to strike it out. You can remember that. Simply say what you know.

MR. LAWRENCE BOGLE: Let the witness testify.

MR. HAYDEN: I will just advise him, if you don't want to do it.

MR. LAWRENCE BOGLE: If it was necessary, I would.

Q. (Mr. Lawrence Bogle) Then you testify that it appeared a little brighter when you were abaft of the beam; is that it?

MR. HAYDEN: I object to that as leading and suggestive. He can tell what he saw.

MR. LAWRENCE BOGLE: Well, that is what I want him to do.

A. The lights appeared brighter abaft of the beam and abeam than they did the first time I ever saw it.

Q. (Mr. Lawrence Bogle) How did they appear as you proceeded to pass her?

MR. HAYDEN: I object to that as having been gone into.

A. After we passed him they began to get dim again.

Q. (Mr. Lawrence Bogle) Mr. Phillips, did you whistle to the "Strathalbyn" at the time you passed her north of Robinson?

MR. HAYDEN: I object as immaterial.

A. No sir.

Q. (Mr. Lawrence Bogle) Did she give you a whistle? A. No sir.

Q. Did you give her a whistle at the time of passing at Brown's? A. No sir.

MR. HAYDEN: Same objection.

Q. (Mr. Lawrence Bogle) Mr. Phillips, at the time you passed the "Strathalbyn" at Brown's Point, had you been looking for her lights before you saw them?

MR. HAYDEN: I object to that as immaterial.

A. I had been looking for ship's lights?

Q. Yes.

A. Oh, not specially, no sir. I was watching my course with a light ashore.

Q. You testified before the inspectors in this matter, didn't you? A. Yes sir.

Q. Do you remember at that time of a question being asked you by Captain Turner whether you had been looking for lights?

MR. HAYDEN: I object to the cross examining of your own witness.

Q. And you testified this way—

A. (Interrupting) Had I been looking for lights?

Q. Yes sir, that is, at Brown's Point.

A. I had been looking for them. I always look for lights, both lights and logs.

Q. You and the captain had both been looking for lights there at Brown's Point?

MR. HAYDEN: I object to that as leading.

A. I don't know about him, but I am always looking for lights when I am in the wheel house, always looking ahead, watching out for logs or piles.

(Witness excused.)

An adjournment was here taken until 3:30 o'clock this afternoon.

AFTERNOON'S PROCEEDINGS.

October 28, 1912.

PRESENT: Mr. W. H. Bogle and Mr. Lawrence Bogle of proctors for claimant, respondent and cross-libelant.

Mr. Hayden, proctor for libelant.

FRANK WALKER, produced as a witness on behalf of CLAIMANT, RESPONDENT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. W. H. Bogle) State your name, place of residence and business?

A. Frank Walker; Seattle; naval architect and consulting engineer.

Q. How long have you lived in Seattle?

A. Six years, in Seattle.

Q. How long have you followed the business of naval architect and consulting engineer?

A. In Seattle and Tacoma about fifteen or sixteen years.

Q. Were you called on, soon after the collision between the steamships "Virginian" and "Strathalbyn", to assist in taking measurements of the dimensions of the "Strathalbyn"? A. I was.

Q. By whom were you employed for that purpose?

A. By the firm of Bogle—

MR. W. H. BOGLE: You might put it by representatives of the "Virginian".

MR. HAYDEN: You might put it by the people—I don't think it makes any difference.

MR. W. H. BOGLE: No.

Q. (Mr. W. H. Bogle) Who else acted with you in making these surveys?

A. Captain William H. Logan and Mr. Jack the owner's representative.

Q. Was Mr. Jack the representative of the owners of the steamship "Strathalbyn"? A. Yes.

Q. What was the purpose in making these surveys?

MR. HAYDEN: I object to that as immaterial. I think you and I had better make a stipulation about that. We know more about it.

MR. W. H. BOGLE: Well, he can state, in a general way, what the purpose was.

A. I was asked to join with the others in taking measurements of the vessel, to determine her beam, height and center of her lights and light-screens.

Q. Had her cargo been discharged at the time these measurements were taken? A. Yes sir.

Q. Where was the vessel lying at the time?

A. She was lying in the drydock at Esquimalt, B. C.

Q. Could you locate the stanchions that had been used when the vessel was loaded with lumber?

A. The location of the stanchions were pointed out to us and some of the stanchions were laying on deck.

Q. By whom were the locations pointed out to you?

A. The chief officer of the ship.

Q. Did you and Mr. Jack and Captain Logan make measurements of the vessel? A. Yes sir.

Q. What arrangement, if any, was made for the preparation of tracings and obtaining blue prints of the vessel according to your measurements?

A. It was arranged between us that the draftsman of the B. C. Marine Railway Company should make the drawings from our notes and his own notes; that a tracing should be made and submitted to the three of us, to be checked up and signed, and blue prints made and distributed to the parties interested.

Q. Was the draftsman present at the time the three surveyors made the measurements? A. Yes sir.

Q. After your work was completed, then you undertook the work of having the drawings made, tracings prepared and the blue prints taken?

A. Mr. Jack was the—as he was located on the ground in Victoria, Mr. Jack and Captain Logan undertook to have the work done, and supervised the work of the draftsman, after Mr. Jack and I compared our notes.

Q. Did your notes and Mr. Jack's notes of the measurements correspond in all respects? A. Yes sir.

Q. Was there a tracing ever presented to you for your signature? A. No sir.

Q. Was any blue print taken from the tracing presented to you for your signature?

A. There was a tracing made and carefully gone into by Captain Logan and Mr. Jack—

Q. (Mr. Hayden, interrupting) Were you present?

A. I was not present.

Q. (Mr. Hayden) Were you present?

A. I was not present, no.

MR. HAYDEN: I move to strike out what took place between Captain Logan and Mr. Jack when this man was not present, or any reference to it in the testimony.

A. And Captain Logan personally brought a blue print from this tracing, signed by himself and by Mr. Jack, and then Captain Logan and myself again checked it up between us and decided it was correct, and then I signed the blue print.

Q. (Mr. W. H. Bogle) What became of that blue print?

A. Captain Logan after it was signed instructed me that he intended to take it back to Victoria and have the tracing completed, but in the meantime he was going to take that blue print over to Tacoma to Mr. Hayden, and at the same time Captain Logan agreed to supply me with my copies.

Q. Did you ever get your copies?

A. Never saw anything from that day to this.

Q. What efforts did you make to get your copies?

A. I made two visits to Victoria and called on Captain Logan, and he told me the blue prints were in course of preparation and that he would see I had them that afternoon before I left for Seattle. Then he called up the B. C. Marine Railway; their draftsman informed him that they were not yet dry, but they would be dry before I left. These blue prints never reached me. A week later I was in Victoria and down at the yard of the B. C. yard and asked for my blue prints, and they told me they knew nothing whatever about them, that Mr. Jack had taken everything away with him to New York, including the draftsman's notes and his own notes.

Q. Have you ever seen the tracing of the draftsman's notes or Mr. Jack's notes since that time?

A. Not to my knowledge. Captain Logan wrote me a letter on the subject.

Q. Have you that letter? A. Yes sir.

Q. Produce it.

A. (Witness produces letter). That is the only thing I have.

MR. W. H. BOGLE: I offer this letter in evidence.

MR. HAYDEN: I object to it as immaterial.

Letter referred to was marked claimant's exhibit "5-2", same being attached hereto and returned here-with.

Q. (Mr. W. H. Bogle) Mr. Walker, was the draftsman from the office of the British Columbia Marine Railway present on the ship at the time these measurements were taken by you and Captain Logan and Mr. Jack? A. Yes sir.

Q. Did he also take such notes as he would ordinarily need in preparing his draft for the tracings?

A. He took his own notes, followed up, and he also took measurements that we did not take, such as the sheer-line of the ship and the water-line of the vessel, which is on the drawing.

Q. You state that Captain Logan brought to you a blue print which had been previously signed by him and Mr. Jack? A. Yes sir.

Q. And which you inspected and compared with your notes? A. Yes sir.

Q. And which was then signed by you?

A. Yes sir.

Q. Did that blue print correctly show the measurements that had been taken and the distances between the lights on the ship? A. Yes sir.

Q. And that blue print, as I understand from you, was turned over by Captain Logan to Mr. Hayden, a representative or attorney for the "Strathalbyn"?

A. That is what I understand.

Q. Has that blue print been submitted to you for inspection by Mr. Hayden today? A. Yes sir.

Q. And it is present at this time, is it? A. Yes sir.

MR. W. H. BOGLE: We now ask Mr. Hayden to furnish us this blue print, for the purpose of having it introduced in evidence.

MR. HAYDEN: The blue print is on the table there and submitted to your inspection. I want to say this, in connection with the blue print, that I would prefer this not being introduced in evidence at this time. I have sometime before this furnished you with a copy of the blue print, with all the figures connected with the blue print. I would just as soon have it marked by the stenographer for identification, but I would like to send the blue print to Captain Jack, who is in New York, for his inspection in connection with the depositions that I want to take there, so that he can see the original blue print; and I suggest that you introduce the copy that I have furnished you of this blue print and mark the other for identification, to be referred to but not introduced in evidence yet, and Mr. Walker has already checked over the figures on the copy and told me they are all right.

There is nothing wrong with it, so that you have exactly the same thing for use in evidence. I would like to have that original deposition so that it may be referred to in connection with the deposition I wish to take of Captain Jack in connection with the issue here. The copy that you have only has some writing on it where I state that is furnished but call attention to an inaccuracy in it; and as soon as the original is returned after Mr. Jack's deposition we can substitute the original for the copy, if it is agreeable to you.

MR. W. H. BOGLE: With that understanding I will use the copy then, offer the copy in evidence at this time.

Blue print referred to was marked claimant's exhibit "5-3", same being attached hereto and returned herewith.

MR. W. H. BOGLE: Mr. Hayden, it is agreed, as I understand, that the writing on this copy of the blue print, which is addressed to Bogle, Graves, Merritt & Bogle, and signed, under date of September 12, 1912, by Huffer, Hayden & Hamilton, is writing that was put on this copy by you and is not a part of the original.

MR. HAYDEN: I put that writing on there in order to prevent the copy being circulated in any way as a correct drawing, according to my contention of the measurements between the lights.

Q. (Mr. W. H. Bogle) Is this copy, Mr. Walker, a correct copy of the original blue print which was signed by you and Mr. Jack and Captain Logan, with the exception of the letter written on this copy by Mr. Hayden? A. Apparently it is.

Q. Do you remember whether the horizontal measurements shown on the blue print signed by you, and on the copy which has been introduced in evidence, were on the original blue print when it was signed by you?

A. Which do you mean, judge—the horizontal measurement—you mean these measurements (indicating) or fore and aft measurements?

Q. Fore and aft measurements.

A. These measurements here (indicating)?

Q. Yes.

A. Did you ask me if they were on when I signed it?

Q. Yes. A. They were on this one, yes.

Q. On the original blue print when you signed it? A. Yes.

Q. How long were you three engaged in taking these measurements on board the ship?

A. Oh, I could hardly say. It was done in one day, judge.

Q. Did you take any measurements that are not shown on the blue print?

A. Oh, yes, we took numerous measurements that are not shown on the blue print.

Q. In measuring the width between the lights on the vessel, from what points did you take these measurements?

A. We took them in a number of ways until we decided finally which way to take them, as that was the principal one we were asked to be correct on.

Q. How was the final measurement taken?

A. The final measurement was taken from the outside edge of the block to block on the light-screens—the outside edge of the blocks on the light-screens.

Q. Is that the forward end of the screen or the—

A. (Interrupting) The forward end.

Q. Where would that point be with reference to the center of the light?

A. That is supposed to be the center of the light.

Q. What distance did you find that to be?

A. As stated on the drawing, 46 feet 10.

Q. Is that distance as stated on the drawing the correct distance as found by you and these other gentlemen in your measurements at that time?

MR. HAYDEN: I object to that as not the best evidence.

A. We decided it was correct.

Q. (Mr. W. H. Bogle) What was the answer?

A. We decided that was the correct distance.

Q. Was the draftsman present at the time you decided to take the measurement from the outer edge of the forward block of the screens?

A. No sir. For that reason the draftsman left it

blank and it was put in in ink, and the measurements that are put in in ink on this drawing are the measurements taken by Mr. Jack, Captain Logan and myself. The other measurements, shown in white, are the draftsman's own measurements, the lettering and these measurements. All these are put in by Captain Logan and Mr. Jack. (Indicating) This measurement here (indicating), that measurement was put in by the draftsman.

Q. To say "that measurement" it don't mean anything in the record.

A. No. That was simply to get the outline of the ship. There is some erasure there, something has been written in. It is the same as this other one down here (indicating).

MR. HAYDEN: Lawrence, will you read this there? You can read it better than I can. I have been trying to make it out.

MR. LAWRENCE BOGLE: Let the witness read it, if he can.

MR. HAYDEN: Well, you have just read it.

MR. LAWRENCE BOGLE: I have read it for what I thought somebody interested had put in there; evidently has been put in and erased.

Q. (Mr. W. H. Bogle) Mr. Walker, the lines, letters and figures shown on this blue print in white were put there by the draftsman, were they? A. Yes sir.

Q. And the figures and letters written in in ink were put there by Mr. Jack and Captain Logan?

A. Yes sir.

Q. The line showing distance between lights, which contains in ink "46' 10\"", and in white letters the words "Between blocks on forward end of screens", represents the distance between the lights, does it?

A. Between the center of the lights.

Q. Now, where did the draftsman get his information as to the points between which that measurement was taken?

MR. HAYDEN: I object to that, if the man was not there, unless he was present and knows where the draftsman got it.

MR. W. H. BOGLE: Well, that is what I want to know.

A. He got it from—

Q. (Mr. Hayden, interrupting) Were you present when he got it?

A. No, I was not present when he got it.

MR. HAYDEN: All right. I object to the question as hearsay.

Q. (Mr. W. H. Bogle) Was the draftsman present at the time the measurement was taken?

A. No sir, he was not in attendance at the time it was taken, he was busy taking other measurements that were not material.

Q. Now, after you got through with your measurements, did you and Captain Logan and Mr. Jack compare your measurements to see whether they corresponded?

A. Mr. Jack and myself did. Captain Logan did not take notes.

Q. Did your comparisons show that your notes on the measurements corresponded? A. Yes sir.

Q. I understood you to say that it was arranged then between you and Logan and Jack that Jack would furnish the draftsman with the memoranda and notes that would enable him to make the drawing?

A. Yes sir.

Q. Did you ever furnish the draftsman with any memoranda or notes for that purpose?

A. Not personally, no.

Q. Does this drawing shown upon the blue print which has been introduced correctly show the distance between the center of the lights on the steamship "Strathalbyn"?

MR. HAYDEN: I object to that as calling for a conclusion.

A. Yes sir.

MR. HAYDEN: And not the best evidence.

Q. (Mr. W. H. Bogle) Mr. Walker, where were the stanchions located on the vessel with respect to the light?

MR. HAYDEN: What stanchions do you refer to, judge?

MR. W. H. BOGLE: The stanchions for holding the lumber when she was loaded.

A. You mean the cargo stanchions?

Q. (Mr. W. H. Bogle) Yes, the cargo stanchions?

A. The cargo—first cargo stanchions stood immediately abaft these bits.

Q. (Mr. Hayden) Of course you are testifying from where they were pointed out to you?

A. As pointed out by the chief officer. The stanchion on the port side was laying down in that position when I saw it (illustrating).

Q. (Mr. W. H. Bogle) You mean by "that position" lying down?

A. Laying across the deck. Asked "Where are the stanchions?" and the Captain said "That is the one that stood there." That stanchion was—I think it was a 6 by 10, about 20 feet long.

Q. When the vessel was loaded with cargo, were there stanchions extending along the entire deck on each side?

MR. HAYDEN: I object to that. I don't think he saw the vessel loaded. Unless he saw the vessel loaded, I don't think he can testify to that.

Q. (Mr. Hayden) Did you see the vessel loaded?

A. Not previous to the accident.

Q. (Mr. W. H. Bogle) Assuming that that vessel was loaded with lumber to a height of 14 to 15 feet on her deck, would it have been necessary to have placed stanchions along the sides of the deck to hold the lumber? A. Yes sir.

Q. That would be on the forward deck?

A. Yes sir.

Q. How far apart would those stanchions be located?

MR. HAYDEN: I object to that as not the best evidence, and surmise.

A. Oh, eight to ten feet apart; perhaps twelve.

Q. (Mr. W. H. Bogle) Mr. Walker, have you drawn another or prepared another blue print showing this deck of the "Strathalbyn" in accordance with the measurements taken at the time, and, if so, I will ask you to look at the print I now hand you and ask you if that is correct?

A. Yes sir, that is one prepared by me.

Q. Wherein does it differ from the blue print that was signed by you and the other surveyors?

A. Well, it differs in the measurements taken across the deck. These are as we took them (indicating) and these are as we took them (indicating), and those that were prepared by the surveyors were as the draftsman took them—these widths of these points—but it amounts to the same thing exactly; they are simply a measurement in a different position, and they are points of the curve just the same.

Q. It shows the same curve of the vessel?

A. Same curve of the vessel.

Q. Does the drawing which you have made show—

A. (Interrupting) For instance, the first one that the draftsman has is forty-eight foot seven; the first one we took was forty-eight seven and a half; then we went back twelve feet and we took forty-eight feet six; his gives forty-eight feet five and a half.

Q. Does the new plat which you have drawn show the location of the cargo stanchion immediately forward of the lights on the vessel? A. Yes.

Q. And does that correctly show the location of that stanchion?

A. As pointed out to me by the master and chief officer?

Q. Your blue print shows also the form of the light-screens? A. Yes sir.

Q. Is that a correct representation of the form of light-screen that is used and was used on the "Strathalbyn" at that time? A. Yes sir.

Q. Were those light-screens constructed in accordance with the navigation rule which reads as follows: "The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light so as to prevent these lights from being seen across the bow"? A. Yes sir.

Q. What was the distance from the light-screen to the first cargo stanchion forward? A. Well—

MR. HAYDEN: (Interrupting) Mr. Walker, you are referring to this map here. It has not been offered in evidence.

MR. W. H. BOGLE: I will offer it in evidence.

MR. HAYDEN: I don't think it is the best evidence. I would like to ask Mr. Walker a question or two. Have you identified that?

MR. W. H. BOGLE: No, I offer it in evidence now and ask the stenographer to identify it.

Q. (Mr. Hayden) What did you make those numbers on there from, Mr. Walker—distances?

A. From my notes.

Q. (Mr. Hayden) And have you your notes with you? A. No.

MR. HAYDEN: I object to the use of that as not the best evidence.

Q. (Mr. Hayden) The notes were made at the time, were they?

A. My notes were made at the time.

Q. (Mr. Hayden) Where are your notes?

A. Well, I presume they are in the book that I made them in.

Q. (Mr. Hayden) Where is the book?

A. I don't know.

Q. (Mr. Hayden) Have you lost the book?

A. No, I haven't lost the book.

Q. (Mr. Hayden) Could you get it?

A. I could get it—I think I could.

MR. HAYDEN: I demand to see the book that Mr. Walker has his notes in. I object to this map going in until I have had a chance to look at his notes, before he has got a right to testify to those distances taken from his notes.

THE WITNESS: My notes were made my own way and there is nobody else understands my notes but myself.

MR. HAYDEN: I presume that is right.

Q. (Mr. W. H. Bogle) Is this blue print which you present a correct representation of the deck of that vessel in so far as the distances between points and other measurements shown thereon are concerned?

A. Yes sir.

MR. W. H. BOGLE: I offer it in evidence.

MR. HAYDEN: Same objection.

Blue print referred to was marked claimant's ex-

hibit "5-4", same being attached hereto and returned herewith.

Q. (Mr. W. H. Bogle) Mr. Walker, what is the distance between the outer edge of the cargo stanchions immediately forward of the lights?

A. Both of these blue prints show that; it is forty-eight foot seven and a half.

Q. Your plat, exhibit "5-4", shows the same width that the other plat does? A. Yes.

Q. The one that was signed by you and Jack?

A. Yes.

Q. And how far forward of the screen-lights were those stanchions located?

MR. HAYDEN: The same objection to all this testimony, testifying on this looking at this blue print.

Q. (Continuing) —from the light—from the forward end of the screen?

A. Well, the blue print shows it just the same as our notes took it—eight foot three.

Q. That is the same distance shown on the other plat, is it? A. They show on both plats.

Q. I notice on exhibit "5-4" a line drawn from the center of the light along the outer edge of the forward stanchion and extending beyond the length of the ship —this line being drawn on both sides; what do those lines represent?

A. They indicate the line of light.

Q. The area between those lines would be obscured from these side lights, would it? A. Yes sir.

Q. At a distance of 400 feet beyond the bow of the ship, what would be the width of this dark area?

A. You say 400 feet, judge?

Q. Yes.

A. 240 feet. Just wait a minute before you put it in. It would be 60 feet in a hundred. Four times that would be 240 feet, approximately.

Q. Then at a distance of 800 feet forward of the vessel this dark area would cover 480 feet, would it?

A. Yes sir.

Q. Mr. Walker, look at your calculation again and see if you have not given the width of the dark area at

a point 400 feet forward of the light instead of 400 feet forward of the bow of the vessel?

A. I have given it 400 feet forward of the light. I have taken my first measurement 100 feet from the light.

Q. About how many points off the bow does that ray of light run?

MR. HAYDEN: I think that can be definitely calculated.

A. I might make a mistake on that, judge.

Q. On the blue print signed by yourself, Mr. Jack and Captain Logan, on the cross section in the column between the light-screen there seems to have been some pencil writing on there which has been erased; do you know what it is?

MR. HAYDEN: I wish you could send somebody down to Mr. Walker's office for that book. I want to insist on having it before I cross examine.

A. "46 feet 10" it says, but I can't make it out.

MR. HAYDEN: Maybe I can read it, judge.

MR. W. H. BOGLE: Forty-six ten feet from—

MR. HAYDEN: "46 feet 10 from between iron lamp holders."

Q. (Mr. W. H. Bogle) Was there any such notation on that blue print at the time you signed it?

A. There was no writing on there at all at the time I signed the blue print.

CROSS EXAMINATION.

Q. (Mr. Hayden) Now, captain, will you please go and get your book, and I will examine you after you get it. A. Not tonight.

MR. HAYDEN: Then I will postpone my examination, if it is agreeable to you gentlemen, until we get this book.

MR. W. H. BOGLE: All right.

Q. (Mr. Hayden) What is the reason you can't get it tonight?

A. Because I have got other business on and I don't intend to go and get it.

Q. Why didn't you bring it up?

A. Because I have no use for it and you have no use for it.

Q. I have a use for it and I insist on having it.

A. Well, if I can find it you can see it. I have used a number of note books since then. I am using notes every day.

MR. W. H. BOGLE: We want the production of Mr. Logan's and Mr. Jack's note books.

MR. HAYDEN: That is all right, I will have them produced. I haven't anything to keep back on this proposition at all.

MR. W. H. BOGLE: Neither have we.

MR. HAYDEN: No, you haven't.

MR. W. H. BOGLE: We would also like the production of the—

THE WITNESS: (Interrupting) My note book is my private note book, it does not interest you at all.

MR. HAYDEN: It does interest me, though. This is a matter of business here, judge. I don't want to postpone my cross examination.

MR. W. H. BOGLE: Well, Mr. Hayden—

MR. HAYDEN: (Interrupting) I want to have it right now, and Mr. Walker has submitted himself for cross examination this afternoon, and I think it is only right, as it is a matter of walking two or three blocks to get his note book, that he go down and get it.

MR. W. H. BOGLE: There was no notice or intimation, so far as I know, that this note book would be required on this examination, consequently Mr. Walker has not brought it with him. It is now nearly five o'clock.

THE WITNESS: I have several other note books in use at the present time.

MR. W. H. BOGLE: And we are perfectly willing to have the cross examination postponed, and Mr. Walker will look up his note book and have it present at such time as you may indicate that you want to go ahead with cross examination.

MR. HAYDEN: Well, we will cross examine tomorrow morning then.

THE WITNESS: Not tomorrow morning with me, sir.

MR. W. H. BOGLE: You will have to make some time that will accommodate the witness.

MR. HAYDEN: I will say this, that until today

I expected, after having submitted this blue print, that there would be no question of cross examining or no questioning about these measurements, and I didn't know before you started in that Mr. Walker was going to be examined today about these measurements, and of course I could not demand him to produce his notes until I knew that to be the fact.

MR. LAWRENCE BOGLE: And I would also like to state—

MR. HAYDEN: (Continuing) And I would like further to say that I told Mr. Walker, when he refused to show me his note book at a prior time, that at the time we took this testimony I would want his note book and intended to have that introduced in evidence—at the time we were first discussing this what I claim is an inaccuracy here in this drawing.

MR. LAWRENCE BOGLE: Well, I would like to state that I notified Mr. Hayden this morning that we will take Mr. Walker's testimony this afternoon.

MR. W. H. BOGLE: So far as the note book is concerned, if it can be found, and I have no doubt it can, Mr. Walker will produce it and counsel will have ample opportunity to cross examine him about it.

THE WITNESS: There is one thing I want to say to you—

MR. W. H. BOGLE: (Interrupting) In postponing the thing some consideration must be given to the convenience of the witness. If he has other engagements for tomorrow morning—

MR. HAYDEN: (Interrupting) I am willing to wait tonight.

MR. W. H. BOGLE: It will be necessary to set some other time to cross examine him, if you want that note book present.

THE WITNESS: There is one thing I want to say, judge, that I am not going to give up my note book. I keep my note books, they are valuable to me, and I am not going to give my note book up to go into this, to be hung around the court, and I can't take a copy of it. I can tear the pages out.

MR. W. H. BOGLE: If you produce it, the stenographer can make any copies from it that Mr. Hayden

wants; if you want to keep the original book, of course you have a right to do it.

THE WITNESS: I want to keep it.

MR. W. H. BOGLE: But Mr. Hayden can take any copy that he thinks has any bearing on the case. Now, when will you be at leisure for cross examination, Mr. Walker?

THE WITNESS: I could be at liberty tomorrow afternoon about 3:30 or 4 o'clock.

MR. W. H. BOGLE: How will that suit you, Mr. Hayden?

THE WITNESS: Tomorrow morning it is impossible with me.

MR. HAYDEN: What is the matter with this evening?

THE WITNESS: I have other business on this evening. I expected to be through by this time.

MR. HAYDEN: Can't you arrange your affairs so that you can have this tomorrow morning?

THE WITNESS: No sir, I cannot. I have got some business that I have agreed to attend to tomorrow morning, which means money to the people that I am engaged by.

By agreement, the original blue print signed by the three surveyors is marked claimant's identification "5-5".

An adjournment was here taken until three o'clock tomorrow afternoon.

Seattle, Wash., October 29, 1912.

Continuation of proceedings pursuant to adjournment.

FRANK WALKER resumed the stand.

Q. (Mr. Hayden) Let me see your book now, will you please, Mr. Walker?

A. (Witness produces book.)

Q. Do you remember the date that you made these measurements?

A. The date is on the page—I think it was February 19th, I believe—on the first page.

Q. (Showing book to witness) That was the date. And you said Captain Logan and Mr. Jack and yourself were present? A. Yes sir.

Q. Were any other people present when the surveys were being made?

A. There was quite a number of people around, quite an audience; there was yourself and Mr. Bogle and the captain of the ship and the mate of the ship and a half a dozen others.

Q. Do you know what mate?

A. Chief mate was present.

Q. By the captain of the ship you mean Captain Crerar. A. I dont' remember his name.

Q. It was the master of the "Strathalbyn", you mean?

A. Yes, the captain of the ship we are talking about.

Q. And do you remember at this time who were holding the tape, using the tape?

A. Captain Logan was holding one end of it and Mr. Jack and I think at times you held one end of the tape.

Q. Don't you remember Mr. Purdy, the first officer, holding the far off end of the tape?

A. Various people held it at times. Mr. Jack and I were always at the measuring end, though.

Q. Was not Mr. Purdy practically always at the end holding it on the mark?

A. No, Captain Logan was there quite a number of times. Owing to obstructions, the tape had to be passed backwards and forwards to different people.

Q. There were no obstructions across the bridge between the two lights, though?

A. No, nothing material.

Q. Do you remember how those light-screens were placed on the side of the ship?

A. I don't remember the detail of the fastenings. I know they were fastened outside of the bridge—outside of the bridge siding—the ends of the bridge, lower bridge.

Q. Were they fastened on anything peculiar?

A. I really don't remember the fastenings of them; the ordinary way, as far as I remember.

Q. You remember they were fastened on a swinging gate there?

A. I remember there was a gate in the woodwork of the bridge to get at the lights.

Q. Do you remember that in the light-screens—in each light-screen there was one iron bracket made for the lamps to fit upon?

A. That the lamps were hooked on, yes.

Q. Do you remember that there was a hole through the light screen and this bridge boarding that formed the bridge at the place where these iron brackets were?

A. They were forward of the iron brackets, yes.

Q. Do you remember that they were right at the iron brackets?

A. No, I remember they were forward.

Q. Don't you remember they were at the iron brackets, so as to leave room for the screw that held the lamp on the iron brackets to be screwed through?

A. They were very close to the iron brackets; I don't quite remember the location. It was a hand-hole anyway.

Q. Now, do you remember that in making the measurement across the bridge that there was a measurement made through these holes, hand-holes, off to the iron brackets?

A. I remember a great number of measurements taken across there.

Q. Was that one of them?

A. That was one of them, yes. It was not recorded.

Q. That is a measurement that you did not record, is it? A. I did not record it, nor the others.

Q. Do you remember of getting a measurement 47 feet 7?

A. I have a note of a measurement 47 feet 7 in my book.

Q. And was that measurement taken in connection with the light-screens?

A. That measurement was taken when we were attempting to find the center of the lights and there was a big discussion about the lamps being ashore in Tacoma and that measurement was then dropped.

Q. I don't quite understand that, Mr. Walker. You say you were attempting to get the center of the lights?

A. We were trying to locate the center of the

lights, when it was finally decided among the three of us that the blocks are always the center of the lights.

Q. But when you were trying to get the center of the lights, you took the measurement of 47 feet 7 as the center of the lights, did you? A. No.

Q. At that time, I say? A. No sir.

Q. Before you decided to drop it? A. No sir.

Q. Well, what was the 47 feet 7?

A. The 47 foot 7, I haven't quite a clear recollection of what it was. Apparently it is the outside of the light-screens.

Q. That is your best recollection at this time?

A. That is my best recollection at this time.

Q. Now, what is your best recollection at this time of this 46 foot 10?

A. As it is shown in my book, the center of the light; that is what we all finally agreed upon as the center of the light.

Q. That woodwork that was on the deck, Mr. Walker,—around the deck, rather, it was sort of a railing, wasn't it, on which the lights were fastened?

A. You mean the bridge?

Q. Yes.

A. The lights were screwed to the overhang of the bridge outside of the bridge bulwark or the bridge siding.

Q. Yes, they were secured to the bridge bulwark or sort of a fence built around the bridge.

A. You have it on one of these blue prints, I think it is on here. This shows where they were screwed. They were screwed to that part of the bridge, the outside corner of the bridge, just as it is shown there.

MR. LAWRENCE BOGLE: What exhibit is that? A. That is on the original blue print.

MR. HAYDEN: That is on the copy of the original blue print, exhibit "5-3".

Q. (Mr. Hayden) Mr. Walker, how did you make up the 46 feet 10, of what measurements?

A. The 46 foot 10 was made up by a direct measurement through the light-screens, adding the four and a half inches of the block.

Q. You didn't make the measurements separately?

A. We measured the block by my rule. I measured

the block and then we took the measurement between the —through the holes and between the face of the boards —light-screens.

Q. On the drawing here you give 46 foot 10. You didn't take 46 foot one and make a drawing to the inner edge of your light screen? A. No.

Q. And then add four and a half inches on each side of it?

A. No, we took it as one measurement.

Q. I notice in this book that 46 feet 10 is placed right under 47 feet 7 and that the measurement is shorter—the distance—diagram that you have got under there is shorter. Does that make it any clearer to your mind— A. (Interrupting) Let me look.

Q. (Continuing) —why you should have this 46 foot 10, a shorter measurement, where you say it comes to the center of the light, than you should make 47 feet 7 which you previously—you have now a recollection that you at one time thought was the center of the light?

A. I never said that, Mr. Hayden. Excuse me. We were trying to locate the center of the light when that 47-7 was taken.

Q. But I say then you put it down for some reason?

A. It has never been used, it has no bearing or meaning whatever. Those circles indicate the center of lights is 46-10, indicates the distance between them.

Q. Why did you leave 47-7?

A. Because there was no necessity of rubbing it out. It was simply a useless measurement.

Q. I see. But 47 feet 7 is just nine inches more than 46 feet 10, isn't it?

A. That is what it is, yes.

Q. And the light-screens—the block in the end of the light-screen is just four and a half inches on each light-screen; is that right?

A. That is right; the drawing shows it.

Q. So that if you should have taken 46 feet 10 as by any chance the inside of the light-box or light-screen, rather, and added your four inches and a half on each side of the ship, you would have got 47 feet 7 as the distance between the outside edge of the blocks of the light-screens; is that right?

A. I didn't quite follow that.

(Question read.)

A. If we had measured it that way, but we didn't measure it that way.

Q. I see. On the other page, the next page of this book we are referring to, in a circle you have the figures "48-8". Underneath those figures you have "47-7", under which a line is drawn and below a subtraction and you have one foot one. When did you put those figures down, Mr. Walker?

A. At the same time, but what they mean I have no recollection.

Q. I see.

A. There was some argument between Logan and Jack and myself.

Q. The question was, was it not, as to how much wider the rail of the ship was than the distance between the outer edges of the blocks of the light-screens?

A. I don't have any recollection of that, because there is no measurement on the ship that coincides with that at all.

Q. I see; but you were taking measurements of the ship at that time and would only put down some measurement on the ship that you actually took.

A. I don't know. We discussed other measurements besides that.

Q. But you only took measurements on the ship, you didn't put down—

A. (Interrupting) We were talking of molded breadth, I believe, if I recollect about that.

Q. The molded breadth?

A. The molded breadth of the vessel.

Q. What does that mean?

A. That means the measurement on the inside of the frames of the vessel at the widest part.

Q. That would not necessarily be on the deck at all, would it? A. No.

Q. As a matter of fact, it would be down in the hold?

A. I think the register book gives her a 48-8 molded breadth.

Q. That would be down below the deck?

A. That would be immediately under the deck-plating. That measurement was never taken—48-8 was never taken—simply discussed; but what it was I have no recollection at the present time.

Q. You have no recollection of why you subtracted 47 feet 7 from it, either, have you?

A. I have no recollection of that.

Q. You haven't any recollection of what the 47 feet 7 stood for, have you?

A. No clear recollection of that. That was not a decided measurement with us.

Q. I notice also in this book that you have a measurement across the ship 48 feet $7\frac{1}{2}$ and that the "8" has been rubbed out and the " $7\frac{1}{2}$ " written over it with a different pencil—heavier pencil?

A. No, that was made at the same time, Mr. Hayden, the same pencil pressed heavier; there has never been a mark made in the book since the day I made those marks.

Q. No, but you rubbed out the "8" for some reason?

A. Oh, maybe a drop of wet or something on it.

Q. You can see the "8".

A. There was an argument about a half an inch, between Logan, Jack and myself, in measuring across the ship; there was a little argument about half inches, and which I think you will find that on the blue print I conceded the half inch to them; you see they give 48 feet 7 and my measurement is 48- $7\frac{1}{2}$, you see. Got those measurements within a half an inch.

Q. A wave in the tape?

A. Which has to be in the tape, Mr. Hayden.

Q. On this exhibit "5-4" you have not tried to put down any figure for this 47 feet 7, have you?

A. No, there was no definite measurements taken, no bearing—

Q. (Interrupting) And you haven't got 47 feet 7 on these plans at all?

A. On neither of the blue prints are there 47 foot 7.

Q. So you didn't put it on this?

A. Because I had no occasion to.

Q. Did you prepare this blue print personally?

A. I did.

Q. Your own drawing, is it?

A. Well, my draftsman made it under my supervision. He is a man that never saw the ship.

Q. Now, I want to introduce these pages of this book, Mr. Walker. A. I could not spare that page.

Q. I want this—

A. (Interrupting) You can take a copy of it.

Q. (Continuing) —48 foot 7, I would like to have that.

MR. HAYDEN: Might get a copy in here, Mr. Bogle.

A. There is one page I will cut you out if you wish me to cut it out.

Q. Yes.

A. (Witness cuts out one sheet of book) I would just like to take that date myself, if you don't mind, will you please (witness writing). Now, this one, I would rather you would make a copy of that.

Q. I wonder if you can put that right on there, put this right on that page that you have cut out.

MR. LAWRENCE BOGLE: Better make a copy on another page.

THE WITNESS: Plenty of room for it.

MR. LAWRENCE BOGLE: I think you had better put it on another page.

MR. HAYDEN: What do you think about it?

MR. W. H. BOGLE: It don't make any difference.

MR. LAWRENCE BOGLE: The record might as well show it was on another page.

MR. HAYDEN: We will stipulate that the other was another page.

MR. LAWRENCE BOGLE: Make it on another piece of paper.

THE WITNESS: Do you want these other measurements too?

Q. (Mr. Hayden) Yes, please.

A. (Witness copying with pencil).

The two papers above referred to were offered in evidence and marked, respectively, libelant's exhibits "U-1" and "U-2", same being attached hereto and returned herewith.

Q. (Mr. Hayden) Now, Mr. Walker, referring to

exhibit entitled exhibit "U-1", that is a page taken out of your book containing the measurements that we have been just referring to in the testimony? A. Yes sir.

Q. One of the pages. And libelant's exhibit "U-2" is a copy of the second page that we have been referring to? A. Yes sir.

Q. Now, referring to libelant's exhibit "U-2", will you please indicate on that exhibit which line is the main deck of the vessel?

A. The base line, the lower line. It is marked, it shows deck—upper deck and bridge deck.

Q. Will you just write "Main deck" opposite there?

A. Then it won't be a copy of it.

Q. Well, just write "Main deck" on it. The record will show. A. (Witness writes "Main deck line.")

Q. Now, the circle on the right hand line—

A. (Interrupting) Isn't that the left hand line?

Q. The right hand line.

A. That is the left hand line. This is on the starboard side of the bridge.

Q. Well, I was referring to the right hand line of this exhibit, the right hand line where the measurements are in this exhibit. A. Yes.

Q. The circle indicates the port hole? A. Yes sir.

Q. The light in the—

A. (Interrupting) In the face of the bridge. It was to save me making another sketch. I didn't want to make a special sketch to put these heights down on, so I made that circle there.

Q. And that circle then is similar to the circle that I put a pencil cross across on claimant's exhibit "5-4".

A. Yes sir, indicates the top of that port hole.

Q. I don't notice, Mr. Walker, any measurement between the top of the port hole and the lower bridge deck. Have you got any?

A. You don't have to have that. You see here is—this gives it 15 foot 5 to the top of the deck, and deduct 14 from 15 five will give you one foot five inches.

Q. Fifteen feet five is the top of the lower deck?

A. No, of the bridge deck.

Q. Top of the nosing of the lower bridge deck?

A. Yes.

Q. From the lower bridge deck to this horseshoe looking mark—

A. (Interrupting) That is the nosing of the bulwark rail.

Q. (Continuing) —on libelant's exhibit "U-2"—

A. (Interrupting) That is the rail on the bridge.

Q. (Continuing) —is the rail on the bridge.

A. Yes.

Q. So that the height of the railing on the bridge is three feet three inches? A. Three feet three inches.

Q. And the total distance from the main deck to the lower part of the upper bridge deck is 23 feet and a half an inch? A. Yes sir.

Q. That is what you mean by that drawing?

A. That is what that indicates. Those were just height measurements.

Q. Referring now to this exhibit "U-1", will you explain, please, what these figures indicate following the left line, for instance, there is a star and then "6" and then a star and then "12" and a star and "12" and "18" and "15" and so forth?

A. It indicates the distance apart that the outline measurements of the deck were taken. The first one was taken six feet from the face of the break of the bridge, the next 12 feet from it, and 12 feet and so forth as shown.

Q. And at the point, the lower edge of the paper, there is sort of a triangle figure with 44 feet 2 in it.

A. It represents the width of the forecastle head.

Q. That is the width of the forecastle head at the break of the—

A. (Interrupting) At the break of the forecastle head.

Q. You mean by the "break of the forecastle head" where you first meet it, coming forward?

A. Where you first meet it, where it breaks off.

Q. As you are walking forward? A. Yes.

Q. And these figures in the center of the ship "8-7½" "48-6" "48-2" and so forth, indicate what?

A. The inside of the rail, to get the form of the curve of the deck.

Q. Now, reversing, going to the other side of this

libelant's exhibit "U-1", the figures 47 feet 7 and 46 feet 10 are just what we have been explaining?

A. I have explained that.

Q. Yes. Coming down to the other figures, will you explain them, please?

A. 39 feet is the length of the forecastle head; 8 feet is the height of the forecastle head.

Q. At the break of the forecastle head?

A. At the break of the forecastle head.

Q. Yes.

A. And then this smaller measurement aft indicates the distance from the break of the bridge to the after side of the bits.

Q. That is 8 feet 3? A. Yes.

Q. And now what is—

A. (Interrupting) And then 17 feet one inch represents the height of the center of the light from the deck. You see a little round circle drawn to represent the center of the light.

Q. And what is the four feet two inches?

A. Four feet two represents the distance from the break of the bridge to the after end of the light-screen. This little mark here with the cross in it shows the aft end of the light screen.

Q. Four feet two. You haven't any measurements of the length of the light-screen, have you? A. No.

Q. You haven't any measurement—

A. (Interrupting) That gives you the measurements on the length of the light-screen.

Q. You haven't any measurements, have you, of the distance that the light-screen—the forward end of the blocks in the light-screens were back from the forward end or forward edge of the house?

A. Come practically close up to the edge of the bridge—the front edge of the bridge as shown.

Q. There was some distance in there, don't you remember, Mr.—

A. (Interrupting) We measured from the face of the bridge to the after part here; that was four feet two. The light-screens were regulation screens.

Q. I notice on this drawing of yours, libelant's "5-

4," that you have a star indicated by four and a half inches in the light-screen—

A. (Interrupting) Represents the center of the light.

Q. (Continuing) —that does not represent the block in the forward end of the light-screen?

A. Also represents the block on the forward end of the light screen.

Q. And you have set the block back considerably from the break of the house?

A. Well, I didn't set it back. I set the center of the light back where it belongs—where it was.

Q. No, you say this indicates the—

A. (Interrupting) That is the face of the block, and the straight line from it parallel with the center line of the vessel is the center of the light.

Q. The block I am talking about—you say this four and a half inches, it is marked here, represents the block?

A. No, that represents the distance from the inside of the screen to the center of the light, four and a half inches.

Q. Oh, I see. Well, where is the block on this?

A. Right there (indicating).

Q. Right there? A. Yes.

Q. We will mark a line out from it. Write "block" after it. (Writing.) A. Just as you please.

Q. This block is at the end of the light-screen, is that the way it was constructed? A. Yes, sir.

Q. Now, on claimant's exhibit "5-4" you have attempted or have you, followed these figures that you have just been testifying about on libelant's exhibit "U-1" and "U-2"?

A. I have followed the measurements as taken by us at the time.

Q. And as shown by those exhibits? A. Yes.

Q. I believe you said yesterday that the draftsman of the B. C. Marine Railway Company was not present at the time you were making the measurements of the distance between the light-screens?

A. To the best of my recollection he was not.

Q. He was on the dock or on the land there alongside of the dock with his transit, wasn't he?

A. He was taking other measurements that were not material, to get the outline of the vessel.

Q. Did Mr. Jack personally check over the original blue print of which claimant's exhibit "5-3" is a copy, with you personally?

A. Mr. Jack personally checked over his notes with me.

Q. Did he have his notes with him?

A. We checked them before we left the ship.

Q. Did you check them on the drawing with Mr. Jack?

A. I checked them on the drawing with Captain Logan.

Q. Not with Mr. Jack?

A. Not with Mr. Jack. At the time I checked them I asked him if he and Jack had checked them.

Q. You asked Mr. Logan?

A. I asked Logan if he and Jack had checked them and he was satisfied, and he said, "Yes, perfectly satisfied, and they are correct." Then I said, "For my notes they are practically correct, although I have a half an inch difference in the width of ship, with you people, but I will sign it because it is correct in the main."

Q. Then you and Captain Jack agreed upon your notes in Victoria before you left?

A. Before I left, yes.

Q. Do you remember the nature of the notes or the paper—what the notes were written on?

A. No, I don't. If I saw them again I could not swear to them.

Q. So that Mr. Logan brought this claimant's identification "5-5" to you?

A. He brought it to my office.

Q. Did he sign it in your office?

A. He had signed it previously. He and Jack had signed it previously; and I asked him at the time who put the ink measurements in, I said, "Why didn't the draftsman put them all in?" He said, "Jack and I put them in, to make sure of getting them right."

Q. That is what he said? A. Yes.

Q. "Jack and I put them in"? A. Yes.

Q. Both of them? A. Yes, between them.

Q. "They were put in between Jack and I"—what did he say?

A. Well, you clearly understand what I mean.

Q. I want to get just as near as I can what he said.

A. I can't repeat his words. He said, "We put those marks in—Jack and I."

Q. Have you got any record or recollection of when this claimant's identification 5-5 was signed by you?

A. No. I should say about a week after we took the measurements; perhaps four or five days after, I could not say; some little time after.

Q. There is something about this ship, Mr. Walker, that I do not see on any of these blue prints, except here possibly it is indicated. Aft of the bits there was a—will you describe or draw on this blue print to show how the rail came inboard aft of the bits? It don't seem to be on any of these drawings?

A. As far as I remember, it was the curve as shown there.

Q. Yes. Curved in to the house, didn't it?

A. Curved as all ships do, it would have a curve, and strain that is—the greater strain usually comes on a vessel here; that carries it up to the face of the superstructure.

Q. Now, looking aft along the rail, the appearance of the top of the rail where it is some few feet forward of the house, say on the starboard rail, would be the turn to the right, turn inboard?

A. No, that superstructure plating continues on past the bridge, you see, the top of the rail flanges upwards.

Q. And broadens out?

A. Well, no, it didn't broaden out, it remains the same. This is the inside of the rail here, this shows it here; that just comes up to the face—this curve comes up to the face of the superstructure.

Q. Don't you remember its broadening out?

A. No. There is a little tumble home of the superstructure; that is all you can see in that. The rail is

not inside of the superstructure, only level with the edge of it.

Q. That is what I mean (illustrating).

A. No, not that way. There is a bracket in that corner.

Q. As you are looking in here, comes up like that.

A. No, not the rail. There is a small bracket in there.

Q. I don't quite understand, captain, just what you mean by a bracket?

A. Well, when the rail goes up to the face of the superstructure, right in the corner is a small bracket, a strengthening piece, level with the top of this rail. The deck is the full width of the break of the bridge.

Q. From the break of the bridge forward, then, the distance between the inboard edges of the rails across the ship would not be less than 48 feet 7 inches?

A. You see it was the same measurement, the same width at this point as it was at that point (indicating); that is the reason we took her first measurement six feet from the break of the bridge. There is no falling in there at all. You are mistaken there.

Q. All right. The draftsman that made this claimant's identification "5-5" was not present in checking up the figures with you and Mr. Jack and Captain Logan, was he?

A. No. Just before we left the ship, Jack and I compared together and he read off his, he said, "What have you got at a certain place?" And I read off mine and we checked them over and were satisfied they were correct.

Q. Now, how many hours, Mr. Walker, do you figure it took to take those measurements?

A. Four or five hours.

Q. Let's see—

A. (Interrupting) You were present all the time.

Q. Yes. I want to get it into the record according to your notion about it.

A. We arrived at the ship somewhere about nine o'clock in the morning.

Q. Weren't we later than that, didn't we wait around quite a while?

A. Nine or half past nine, something like that, and we left the ship again one or two o'clock—two o'clock, I think it was, somewhere about then.

Q. We took lunch there, didn't we?

A. Were up town for lunch, I think.

Q. Went to the club? A. Went to the club, yes.

Q. So that the measurements were really taken—don't you remember we were pretty late in getting started, the people didn't get around and we probably got out there about eleven o'clock?

A. I could not say. I have not any recollection about the exact time. I should say we were four or five hours taking the measurements, which was ample.

Q. Oh, yes, I am not criticising the sufficiency of the time. I wanted to get what your recollection was about it. Now, Mr. Walker, in drawing these projecting lines of light rays that you speak of, you placed the stanchion how far forward—they don't seem to be marked on here—how far forward?

A. There is the front of the bridge, and the exact location as described to me by the captain and chief officer.

Q. But this 8 feet 3 runs up beyond where you have got your stanchion placed?

A. No, it runs up to the round on the top of the bits.

Q. And your stanchion is placed aft of the bits?

A. Yes, that is where the captain put his foot and said, "Here is where the foot of the stanchion was."

Q. Do you usually place stanchions on ships with the narrow side to the rail?

A. That is the idea, getting the strength of the stanchion.

Q. I see. You think that is the way they are usually placed, do you?

A. That is the way they are usually placed when they use a stanchion of that section.

Q. You did not see the way the stanchions were placed on this vessel?

A. No, I only saw the two or three stanchions that were pointed out to me on the deck.

Q. They were lying down? A. Lying down, yes.

Q. You figure the outside edge of the stanchion, in connection with this light illustration of yours, as being against and equal with the inside edge of the rail?

A. Yes, that is where the stanchion would be.

Q. I see. You did not make any allowance for any tumble home on those stanchions? A. No.

Q. In connection with the discussion that you have referred to, relative to the measurement of 47-7, do you remember anything being said at that time to this effect, that if we measured the distance between the light brackets, that is, those iron brackets that the lamps sat on, that as the lamps were in evidence in Tacoma that it would be a very easy matter to get the exact distance to the center line of the lights by adding to the measurement of the distance between the iron brackets the actual size of the lamp or the actual measurement of the distance from the outside of the lamp to the center of the wick?

A. I remember a great deal of discussion on that measurement, Mr. Hayden, and I also remember that in the midst of it Captain Logan said, "Why, what is the good of arguing about that when we have the exact center of the lights to go by? The outside face of the blocks will be the center of the lamps."

Q. You also remember the conversation I have suggested?

A. I remember a great deal about it, about measuring here and measuring there and adding this and subtracting the other, and the lamps were all the time in Tacoma and we forgot the lamps; we dismissed that from our minds, from the very fact that in all light-screens—regulation light-screens the blocks are placed there to indicate the center of the light.

Q. You remember of the remark being then made that the lamps were in Tacoma?

A. Yes, I asked for the lamps myself.

Q. Now, do you remember in that lot of conversation you have referred to a conversation of the substance that I have just suggested?

A. I don't remember any specific suggestions of that kind. There were a great many suggestions made before we finally adopted one principle.

Q. Don't you think, Mr. Walker, that you put that 46 foot 10 down, and also put 47 foot 7 down, 47 foot 7 being the distance between the outer edges of the blocks, in order that you might check up—

A. (Interrupting) No, sir.

Q. (Continuing) —in order that there might be checked up the position of the center of the light when you added the distance from the outer edge of the light to the center of the wick to the distance that was measured between the iron brackets of 46 feet 10?

A. No, sir, the iron brackets were dismissed entirely.

Q. That is your recollection of it now? A. Yes.

Q. How much time did you take going over this libelant's exhibit "5-5" before you signed your name to it, with Captain Logan?

A. I took sufficient time to check over every measurement with Captain Logan, that was down on the blue print and in my note book.

Q. You and Captain Logan did not attempt to erase?

A. We never made any mark on it besides my signing my signature.

Q. You did not attempt to erase this writing up here that was read yesterday?

A. We erased nothing and there was no writing there at the time I signed that blue print.

RE-DIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Mr. Walker, I believe you stated that these measurements were made on February 19, 1912? A. Yes, sir.

Q. And this blue print was presented to you by Captain Logan and signed by you some five or six days thereafter?

A. I could not say exactly when. It was sometime after.

Q. When was the first time that you ever heard that there was any claim by anyone that there was any error or mistake in that blue print?

A. I think it was April 23rd. I made a note of it at the time. (Referring to book.)

Q. Who was it that made the claim at that time that there was an error? A. Mr. Hayden.

Q. And that was the first that you had ever heard that anyone claimed that an error or mistake appeared on the blue print, was it?

A. That was the first I ever heard about it, sir.

Q. That was long after the ship had left the Puget Sound waters, was it?

A. Long after the ship had gone.

Q. And long after the original tracing and memoranda and notes that Mr. Jack had furnished the draftsman had been taken by Mr. Jack back East?

A. Yes, sir, long after that.

Q. So long as the ship was here subject to measurement no claim was made, so far as you know, that there was any mistake in that original measurement or in the blue print? A. No, sir, no claim whatever.

Q. Mr. Walker, do you know when the ship left Puget Sound waters?

A. I don't. I have a note here that I visited her with Mr. Jack when she was laying in Tacoma on March 13th. I think that was a day or two before she sailed.

Q. Mr. Jack lives in New York, doesn't he?

A. I think he does, yes.

Q. And he was out here as the special representative of the owners of that ship? A. Yes, sir.

Q. You have never been furnished by Mr. Jack with the original tracing, have you? A. No, sir.

Q. Or any of the memoranda or notes that were furnished to the draftsman to make the tracing?

A. No, sir.

Q. I understood you to say yesterday that Mr. Jack furnished the draftsman with the memoranda and notes?

A. Mr. Jack personally oversaw the making of the drawing.

Q. Calling your attention now to libelant's exhibit "U-1", being the leaf from your memorandum book containing your original notes, I notice that the line measured 46 feet 10 inches contains a round circle on each end, with an arrow to the center of that circle. What does that circle indicate?

A. That indicates the center of the light and was the final agreement between Mr. Jack and myself.

Q. You stated that the figures 47 feet 7 inches on that memoranda probably referred to a measurement of the distance between the outside edges of the screen?

A. I think it did, yes.

Q. That would be the outside edge of the rear end of the screen, would it? A. Yes, sir.

Q. The light was located in the center, as to width, of that screen? A. Yes, sir.

Q. And it would be four and a half inches from the inner side of the screen to the center of the light, and four and a half inches from the center of the light to the outside edge of the rear end of the screen?

MR. HAYDEN: I object to these questions as leading, and move to strike them out. This witness can testify without having the words put into his mouth by counsel.

Q. (Mr. W. H. Bogle) Is that correct, Mr. Walker?

A. That is to the best of my recollection; but the measurement taken, of 47-7, was not considered material and was dropped.

Q. Who was it, you say, that suggested that to get the measurement exact you could take the outer edge of the forward block of the screen as the center of the light? A. Captain Logan.

Q. Was that acquiesced in by you and Mr. Jack?

A. Yes, sir.

MR. HAYDEN: I object as leading.

Q. (Mr. W. H. Bogle) You have stated that there were a number of persons present at the time these measurements were taken. Who took notes of the measurements? A. Mr. Jack and myself.

Q. Did anyone else of the party take any notes?

A. Not to my knowledge.

Q. Were you and Mr. Jack together at the time each measurement was taken?

A. Yes, we were together right throughout.

Q. Did you each make your own notes at that time?

A. Yes, sir.

Q. Did Captain Logan take any notes of any of these measurements? A. No, sir, not at that time.

Q. Did Mr. Hayden?

A. Not to my knowledge. I was not interested in any of the notes the outsiders were taking.

Q. You were asked by Mr. Hayden if there was not some remark made to the effect that the lamps were in Tacoma and that their diameter could be ascertained for the purpose of getting the center of the flame. Were any steps ever taken to ascertain the diameter of those lamps before these blue prints were made?

A. Not to my knowledge.

Q. You were asked whether there was any or if you knew anything about the tumble home of the stanchions, or if you took that into consideration in drawing your line showing the ray of light. What would be the effect upon the stanchion of a load of lumber upon this forward deck to the height of 14 or 15 feet, as to whether it would tumble home or spread out?

MR. HAYDEN: I object to that as immaterial, as pure speculation. The witness has not seen the stanchions on the ship, the deck load on it.

A. I have supervised the loading of a great number of vessels with high deck cargoes, and the tendency is at all times to fall outwards; very hard to keep them inward.

Q. (Mr. W. H. Bogle) You are required in your business to make surveys of loaded vessels, are you?

A. I am, yes, sir.

Q. Have been doing that for a great many years?

A. I have surveyed a great number of lumber cargoes.

Q. You have stated that there were some measurements made that were not recorded?

A. A great number.

Q. Why were they not recorded?

A. They were useless.

Q. The real purpose of all these measurements was to get the exact distance between the center of these lights and the width forward between the outer edges of these stanchions, wasn't it?

MR. HAYDEN: I object to it as leading.

A. Yes, sir, that was the object of the work.

Q. (Mr. W. H. Bogle) Do you remember whether Mr. Lawrence Bogle was present—

A. (Interrupting) Yes, sir, he was present.

Q. (Continuing)—while these measurements were being taken? A. Yes, sir, he was present.

Q. Do you remember whether he insisted with the surveyors that the measurement of this distance between the center of the lights should be exact?

A. Yes, sir.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) Mr. Walker, have you got a diagram anywhere of the light-screen, showing its measurements? A. No more than these blue prints.

Q. Did you take a drawing of it at any time?

A. The drawings are here.

Q. Did you make the measurements of the light-screen—the measurement of the size of the light-screen?

A. I took the necessary measurements of the light-screens.

Q. Did you make a measurement of the width of the light-screen at the rear end of it?

A. I can't say that I did.

Q. But you did make a very careful measurement of the width of the block and the light screen at the forward end of it?

A. Yes; we all made a very careful measurement of that and we all certified it correct right on that blue print, and the others certified it correct before I did.

Q. And you were very careful, I believe—Mr. Bogle instructed you to be very careful to get the exact center of the lamps?

A. That was Mr. Bogle's instructions to me.

Q. And naturally, without the lamps there, it would be very difficult to get the exact center of the flame of the lamps, wouldn't it?

A. Not at all. The blocks are the center.

Q. You assume that those blocks were right, the correct distance, when you say that, do you not?

A. We assume that they were—that was their measurement at the time I took them.

Q. I say, you assume, though, that those blocks would make the exact center of the lamp?

A. They are passed upon by the government inspectors on the vessel.

Q. And so you assume that they would be the exact center of the lamp?

A. We have to assume that is correct.

Q. Whereas, if you measured to the iron brackets in the light-screens and then measured with the exact lamp you would get the exact distance, would you not?

A. I don't know how the light-screens—how the lamps are hung on the bracket, because the brackets stuck out considerably from the screens.

Q. And however they were hung, the lamp itself would have to fit on them, wouldn't it?

A. I should think so.

Q. So that to get the exact distance between the center of the wick of the lamp, without assuming anything except absolute facts and distances as measured, you would get it by adding the exact measurement of the lamp and the exact measurement between—

A. (Interrupting) We are not talking about the width—

Q. (Interrupting) Wait a minute now. (Continuing)—and the exact measurement between the iron brackets in the lamp screen, wouldn't you?

A. The iron brackets would give us no certain measurement whatever, and we are not talking about the width of the lamp at all, we are talking about the center of the light.

Q. That is why the iron brackets would give you no exact measurement then?

A. Not at all unless we had the lamps to go by.

Q. That is what I say. The lamps are in court; they fit on the iron bracket, don't they?

A. Yes, I presume they do; I could not say; they may not fit; they may be slack.

Q. Now, Mr. Walker, isn't it a fact that in loading lumber cargoes with a high deck load of lumber, that for the purpose of preventing the lumber pushing the stanchions outboard when at sea, that the stanchions are usually given a tumble home when the lumber is first placed upon the deck?

A. The stanchions are set upright and they at-

tempt to keep them as near upright as they possibly can, to get as much lumber as they can on the ship's deck.

Q. You never have seen stanchions tumble home, have you? A. I can't say that I have.

Q. I suppose you have seen them with a tumble outboard a great many times, have you?

A. I have seen them many times with a tumble outboard.

Q. And never recollect of seeing them with a tumble home?

A. It is a very difficult matter to keep them upright, let alone a tumble home.

Q. You would be very much surprised if some one would come and testify in this case that they had a tumble home, would you?

A. I would not be surprised at anything.

Q. I see. I wouldn't either. Have you ever surveyed any ships loaded by the American Trading Company?

A. I can't say that I have. I don't know the people.

Q. What cargo ships carrying lumber—steamers carrying lumber out of Tacoma, with a big high deck load, have you surveyed in the last three years, say?

A. I could not give you the names of the vessels now.

Q. Have you surveyed any?

A. I can't say that I have surveyed any out of Tacoma. I have surveyed some at Port Blakely, I have surveyed some at Port Ludlow, some at Gamble, some at Bellingham.

Q. But you have not surveyed any out of Tacoma for how long?

A. Oh, I could not say. Five or six years, I think, since I surveyed a ship in Tacoma.

Q. Mr. Walker, what would be the possible explanation of your subtracting 47 feet 7 inches from 48 feet 8 inches if 47 feet 7 inches represented the distance between the back end of the screens?

A. I can't give you my exact explanation now, but I think it was to give the tumble home of the bridge; I

can't say; I don't recollect why that was made. It was not material at any time.

Q. Surely, to measure the back end of that screen would not be material at all, would it? A. Yes.

Q. In what way? A. It might be.

Q. Tell me how.

A. As it is usually a guard for the lamp and the lamp was inside of the back of the screen.

Q. Why would it be necessary to measure it?

A. In this case it was not. We took the front end of the screens.

Q. Why were you discussing the distance between the back end of the screen?

A. Oh, I don't know, just the silly discussions that arise on occasions like that. There are a great many foolish discussions over that business.

Q. There was not any discussion about these lights being turned around backward, was there?

A. I don't know what you mean.

Q. I say, the side lights, there was no discussion about the side lights being turned around backwards so that you would want to find out the way the rays would come aft of the ship or anything like that, was there, that would make this rear end of the screen material?

A. That just happens to be the case. The light is supposed to show about 15 degrees abaft the screen; that is what the aft end of the screen is on for.

Q. The aft end of the screen is so as to shut off the rays of light after they come around to a point abaft the beam, is that it?

A. The International Law was holding here.

Q. Is that it?

A. There is a little sketch here somewhere. That is what the law calls for. (Referring to blue print.)

Q. You have got that cut off by the shape of the light.

A. That is a sketch taken from the International Law book and not from this ship.

Q. Oh, I see.

A. This has nothing to do with this ship. This is simply to show what the law calls for it to be. This

represents the glass. Now, in some ships they run this screen up and cut it off. Depends on the formation of the lamp.

Q. What do you mean represents the glass?

A. Well, this is not the "Strathalbyn's" side screen at all, this is what the law calls for. This is a correct drawing of what it should be. This thick white line represents the glass.

Q. Now then the thick white line—this is on exhibit "5-4"—the white line you are referring to now is the one—

MR. BOGLE: (Interrupting) Mark "Center of flame."

A. That is what the regulations call for.

Q. (Mr. Hayden) The thick white line is the glass? A. Yes.

Q. And I draw a line out from that and mark "glass" (writing)—a thick white line; is that right? Draw out two lines and mark your "glass".

A. That is supposed to be. This has no bearing on this case beyond showing what the law calls for.

Q. And the 22 degrees and a half, according to the standard lights—

A. (Interrupting) Must not exceed that.

Q. (Continuing) —as it shines back or aft of the beam is cut off by the lamp itself, according to this standard? A. In some cases.

Q. According to this standard? A. Yes.

Q. You don't want to swear, do you, that I did not make any notes up there that day?

A. Oh, I would not swear to that, no.

Q. Did you find in your book the date that I called your attention to this discrepancy? A. The date?

Q. Or the mistake, as I call it?

A. I gave you the date once.

Q. Yes, you gave the 23rd of April.

A. April 23rd was the day that it was called to my attention in Mr. Lawrence Bogle's office, by you.

Q. You say it was called to your attention by me?

A. Yes.

Q. You and I and Mr. Bogle met in his office?

A. That was the first time I knew anything about it.

Q. Did Mr. Bogle tell you that I had telephoned over from Tacoma that I thought there was something wrong with the map? A. I can't recollect that.

Q. Or blue print. A. Mr. Bogle—

Q. (Interrupting) Do you recollect what Mr. Bogle said to you when he asked you to come up to the office? A. I do not.

Q. But when you came up to the office you had your book with the libelant's exhibits "U-1" and "U-2" with you, did you not? A. Just as it is now, yes.

Q. Do you remember why you brought that book with you?

A. I brought it at Mr. Bogle's request, I think, to check the measurement.

Q. How long before you came up to the office had Mr. Bogle spoken to you about coming up to the office and tried to make an appointment with you?

A. I could not say.

Q. You don't remember whether it was a few days or a few weeks?

A. I think it was the same morning.

Q. The same morning. You remember my asserting at that time, don't you, Mr. Walker, that the correct measurement of 46 feet 10 was the distance between the light brackets?

A. I remember you tried to make me believe that, yes.

MR. BOGLE: I object to it as incompetent and immaterial and an attempt by libelant to get in statements of Mr. Hayden as testimony in this case.

MR. HAYDEN: Mr. Hayden will testify.

MR. BOGLE: We will take it in the regular way, that is all; don't state it.

MR. HAYDEN: What I was trying to do was simply to show that at the time that Mr. Walker was called here the same contention was made by me as it is today.

MR. BOGLE: Well, that was shown by my questions to Mr. Walker, and that is the first time it is made; that is the only point of that date.

Q. (Mr. Hayden) Do you remember at that time I requested you to allow me to see your book from which

these exhibits "U-1" and "U-2" have come, and you refused to permit me to see it?

A. I remember you tried to look over my shoulder and over my notes, and I remember you demanded them and I refused to give them to you.

Q. And you remember you also refused at that time to make any explanation of that distance, 47 feet 7? A. I don't remember what took place.

Q. You remember at that time, too, Mr. Walker, I brought over this claimant's exhibit "5-5" and had it with me?

A. I remember you had a blue print with you.

Q. So that you could examine it and check it over, and I offered you the privilege of examining it and checking it over at the time?

A. I remember you had a blue print with you.

Q. You remember Mr. Bogle or yourself—Mr. Lawrence Bogle or yourself asking me to give you this exhibit "5-5"—a copy of it, and my saying at the time that I objected to doing so because it was inaccurate in my opinion, that I did not want the blue print to get out in circulation with its inaccuracies upon it.

A. I remember some conversation of that kind.

Q. Do you remember my saying that I had upon discovering the error, as I contended, in the print, that I had cabled to Captain Crerar asking him to give me the distance between the light brackets? A. I don't—

Q. And that I had a telegram, in answer, from Captain Crerar, with me—

A. (Interrupting) I don't remember.

Q. (Continuing) —which I showed at that time and which read that the distance was 46 feet 10 inches?

MR. BOGLE: We object to all of this as incompetent, immaterial and irrelevant, and manifestly an improper attempt to get hearsay and improper statements and testimony into the record.

A. I don't recollect the words of the conversation.

Q. (Mr. Hayden) Do you recollect my saying anything about having also communicated with Mr. Jack and Mr. Logan about it?

MR. BOGLE: The same objection.

MR. HAYDEN: You brought my name into this

matter, Mr. Bogle, as being of the notion that I had been trying to withhold this map and change it and have it changed and measurements changed after this ship had gone away. I want now all the facts in connection with this matter, since I think I have discovered the mistake in it, here before the court, as fully as it appears before us. I want the understanding of the people who were present at the time these different matters were taken up.

MR. BOGLE: We have no objection to your taking any testimony that you think is competent and taking it in a proper way by witnesses under oath, but we do object to endeavoring to get a lot of hearsay one-sided statements through cross-examination of this witness.

(Question read.)

A. I have no clear recollection, but I think something of that kind was mentioned.

Q. (Mr. Hayden) Do you recollect my saying that the reason I had called this matter to Mr. Bogle's attention and asked him to have you meet with me was to correct the error so that the map might be introduced in evidence, if it appeared to you that there was an error, to give you an opportunity to check over your notes again and refresh your recollection about it?

A. I recollect your suggesting that there was an error in it and that I could make the change, but I could not see why, as it was no error as far as we were concerned.

Q. That you thought you were right?

A. Sure we were right.

Q. Do you remember the matter being left open and I went away with the understanding that it would be taken up again, that it would be taken up between you and Mr. Jack and Mr. Logan, let it stand that way?

A. I don't recollect.

D. Did you subsequent to that time receive any letters from Mr. Jack about the matter?

A. I did receive a letter from Mr. Jack on the subject.

Q. Did you reply to him? A. I think I did.

Q. Did Mr. Logan see you subsequently to that time? A. Yes.

Q. About these measurements?

A. We never discussed it.

Q. Did he see you about the measurements?

A. He saw me and stated that there was some—that he had heard there was some mistake in it. I said there was no mistake in it as far as I was concerned, and we dropped it. He asked me what I was going to do in the matter, and I said, "Nothing, because we all certified to the correctness of the matter," and they were satisfied with it and they personally wrote them in.

Q. That is what you testified to.

RE-DIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Mr. Walker, you were asked whether there was not some suggestion of measuring from the supposed center of the lamps as they would be hung in these brackets. Would it have been possible for you to have made an accurate measurement of the distance between the centers of the lamps as they would hang in the brackets without having the lamps present to make that measurement? A. No, sir.

Q. The lamps were not present?

A. The lamps were in Tacoma.

Q. And were never submitted to the draftsman or to any of the others of you who made these measurements? A. No, sir.

Q. Referring to the interview of April 23rd in Mr. Lawrence Bogle's office, between yourself, Mr. Hayden and Mr. Lawrence Bogle: You had not received any copy of the blue print?

A. No, sir, I have never received a copy of the blue print.

Q. And do you know whether at that time the claimants or their attorneys had been furnished with any copy?

MR. HAYDEN: I think that has all been gone into, judge; yesterday he went into it very fully.

A. I understood from Captain Logan that he furnished them with a copy—with the only one that was in existence.

Q. I mean the claimants—by the claimants I mean the attorneys of the steamship "Virginian"?

A. Oh, no, no; they never have been furnished any.

Q. At the time of this interview on April 23rd that is referred to, there was some considerable feeling developed between yourself and Mr. Lawrence Bogle and Mr. Hayden, was there not? A. Yes.

Q. What was it about?

A. Simply because of the shabby way in which I had been treated. The drawing we made had been smuggled away into Mr. Hayden's hands, where it had no business; it belonged to the surveyors that made it and each one of us should have had a copy—our copy, as agreed.

Q. At this interview did you or Mr. Lawrence Bogle make a demand on Mr. Hayden for a copy of this signed blue print? A. Yes, sir.

Q. And what reply did he make?

A. I forget the reply; something that he didn't think that it was correct, or something of that kind.

Q. Did he agree to furnish it or did he furnish it?

A. Not to my knowledge.

Q. Did not Mr. Hayden at that time take the position that he would not furnish you or us with a copy of that blue print unless we would consent, in advance, that these figures 46-10 should be changed to "47-7"?

A. Yes, sir.

Q. Mr. Bogle contended that inasmuch as the measurements were taken by stipulation between both sides and by agreement that both sides should be furnished with blue prints, that we were entitled to a copy of those blue prints, did he not? A. Yes, sir.

Q. (Mr. Hayden) You remember that distinctly, do you, Mr. Walker? A. Yes, I do.

Q. And you remember distinctly my—

MR. W. H. BOGLE: I am not through.

MR. HAYDEN: Oh, I thought you said that was all.

MR. W. H. BOGLE: No.

Q. (Mr. W. H. Bogle) Mr. Hayden asked you if the matter was not left open at that time, to be further considered by you and Mr. Jack and Mr. Logan. Do

you recollect whether it was not stated by either you or Mr. Lawrence Bogle that if we were furnished with the copy—either the original or a copy of the signed blue print, that you would then look into the matter and compare it with your notes and take it up with Captain Logan or Captain Jack, with a view to determining whether there had been any mistake, but that you would not take any steps unless a copy of the blue print was furnished?

A. I distinctly made that clear at that time, that I would take it up with those people that were interested with me in making the measurements, provided I had a copy of it supplied me.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) And in connection with that statement, do you remember my saying that you could check over the blue print that I had, if you wished to verify your figures in any way, that the blue print was there for you to do so?

A. I don't recollect any such offer.

Q. You don't recollect that. You recollect my saying, don't you, that if the measurements could not be agreed upon between you gentlemen, since I had received information from Mr. Jack and Mr. Logan and Captain Crerar that they were incorrect, we would have to take testimony on the subject, unless you could subsequently agree with the surveyors about the matter, and that I objected to handing to anybody a blue print that I knew positively, from my own recollection and observation, was incorrect, so that it would get into circulation and risk the rights of the parties in connection with this litigation?

A. I recollect telling you that you had no right to that blue print at all, that blue print belonged to us.

Q. That is all right, yes, but I am talking about your recollection of what I said.

A. I have not a very clear recollection of what you said.

Q. The fact is you didn't pay much attention to what I said; is that it?

A. You talked a great deal. No, I didn't pay much

attention to what you said at that time. It was not before a court.

Q. You were a little sore at Jack and Logan, weren't you?

A. I was sore at whoever might have confiscated the blue print, I was sore.

Q. You have been sore ever since, haven't you?

A. I was sore at the unprofessional and ungentelemanly way I was treated.

Q. You have been sore ever since, haven't you?

A. No, I forget this sort of thing. I have had other things to get sore at since then.

MR. HAYDEN: That is all.

MR. W. H. BOGLE: That is all.

THE WITNESS: I only get sore at the time being.
(Witness excused.)

MR. W. H. BOGLE: We now call upon the libelants to produce, at some time before the hearing of this case, the original blue print,—the original tracing from which the blue print identification "5-5" was taken, and the original memoranda and notes thta were furnished to the draftsman, from which the tracing was made. We desire these documents in order that they may be inspected and testimony taken upon them.

MR. HAYDEN: I will say, right now, that as far as I know—I have not personally the notes from which these tracings were made, but I will do the best I can to have them introduced in evidence.

MR. W. H. BOGLE: That will be all right. I just want to get them, as it appears from that letter that Mr. Jack, the representative of your client, has them.

(Filed Dec. 19, 1912.)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective proctors, that depositions may be taken in behalf of the respective parties before Earl E. Richards, a Notary Public, at room 613 Central Building, Seattle, Washington, at the hour of 11 o'clock a. m., on December 9, 1912, and may be transcribed and read in evidence in behalf of the respective parties with the same effect as

though said depositions had been taken before the United States Commissioner to whom the taking of testimony in this cause was referred.

The signatures of the witnesses to the testimony as transcribed are hereby waived, and all other objections as to the time and manner of taking these depositions are hereby waived.

HUFFER, HAYDEN & HAMILTON,
Proctors for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Respondent, Claimant and Cross-Libelant.

DEPOSITIONS.

BE IT REMEMBERED, that on December 9, 1912, at room 613 Central Building, Seattle, Washington, before me, Earl E. Richards, a Notary Public in and for the State of Washington, appeared Mr. W. H. Hayden (of Messrs. Huffer, Hayden & Hamilton), proctor for libelant, and Mr. Lawrence Bogle (of Messrs. Bogle, Graves, Merritt & Bogle), proctor for respondent, claimant and cross-libelant,

WHEREUPON, the following proceedings were had:

H. L. JACKSON, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name?

A. Jackson—H. L.

Q. What is your business, Mr. Jackson?

A. Sailor.

Q. How long have you been engaged in that business?

A. Well, since I first started in, it has been about 18 years ago; I was ashore for six years.

Q. Mr. Jackson, were you on the gasoline tug "Sal-mora" on the night of January 12, 1912? A. Yes sir.

Q. What voyage were you bound on at that time?

A. What do you mean, the number of it?

Q. No, between what points?

A. We were bound from Tacoma to Seattle.

Q. Did you pass the steamers "Strathalbyn" and "Virginian" on that night? A. Yes sir.

Q. About where did you pass them?

A. Between Pully Point and Robinson.

Q. What first attracted your attention to these two vessels? A. What first attracted my attention?

Q. Yes, what was the first thing that you saw?

A. I saw the masthead light and the range light of the "Virginian", was the first thing I saw, that is the first lights I saw.

Q. And what did you first see of the "Strathalbyn"?

A. I saw the "Strathalbyn".

Q. What do you mean by that, the hull?

A. I saw the outline of the ship.

Q. About how far distant were you from the "Strathalbyn"?

A. Oh, I should say a couple of three ship-lengths.

Q. Did you see any lights on the "Strathalbyn" at all? A. Yes, I did, when I got pretty near abeam of her.

Q. About what time was this, Mr. Jackson, that you passed these two vessels, or first picked them up?

A. That I don't know. It was between eight and nine. Now, just exactly what time, I don't remember. I think the biggest half, though, was on nine o'clock. Let's see, we left Tacoma—yes, it must have been between 8:30 and nine.

Q. Do you know about what the course of the "Strathalbyn" was at the time you first picked her up, that is, about which way she was lying?

A. No, I don't; I don't know exactly what her course would be.

Q. About what course were you on, approximately.

A. Well, we were on a northerly course.

Q. And how was she lying with reference to your vessel?

A. She would probably be on a southwesterly course, because she looked to be a little headed towards Robinson; that would probably bright her on a southwesterly course.

Q. Was the "Strathalbyn" moving when you first saw her?

A. Well, she was moving, yes, she was going

astern; as near as I could figure her out, she was going astern when we first saw her; if she was going any, she was going astern.

Q. Was her bow moving at all?

A. No, only sideways; her bow seemed to be swinging off.

Q. How did you pass these two vessels?

A. In what position, did you mean?

Q. Yes, that is, did you pass on the outside of the "Virginian" or between the two vessels?

A. We passed between the two.

Q. Leaving the "Strathalbyn" on—

A. (Interrupting) On the port side.

Q. The "Virginian" on your starboard?

A. The "Virginian" on the starboard.

Q. Was the "Virginian" moving at all?

A. The "Virginian" appeared to be moving a little, but very slow.

Q. Was she moving forward or astern?

A. She was moving ahead, yes.

Q. Mr. Jackson, about how far away and what was your approximate position with reference to the "Strathalbyn" when you first saw her port light?

A. About how she would bear, you mean?

Q. Yes.

A. Oh, I should say she would bear two or three points.

Q. Off your bow? A. Yes.

Q. And about how far away were you?

A. Oh, about 150 to 200 yards.

Q. Did you see her starboard light at all?

A. No sir, saw no starboard light at no time.

Q. Did you see her masthead light?

A. I saw her masthead light when we got pretty near abeam of her, yes sir.

Q. Did you see the "Virginian's" lights?

A. Yes sir.

Q. About how far away?

A. Well, when we first picked them up?

Q. Yes.

A. Oh, I should say we were a good mile all right when I first came up.

Q. You saw them when you first came on deck?

A. Yes, the "Virginian's" lights; that is the head-light and the range light.

Q. Mr. Jackson, what was the nature of the lights aboard the "Strathalbyn", as to brightness?

A. Brightness? Oh, they were very, very dim. Very dim.

Q. You are speaking now of what lights?

A. The masthead light and her side lights, the port light.

Q. Did you see any other lights aboard of her at all as you were passing her?

A. Well, there was—appeared to be—there was lights; there wasn't very many; of course I was not paying much attention to that; I saw there was a few lights there, but not very many; appeared to be lanterns.

Q. Moving along the decks, were they?

MR. HAYDEN: Let the witness testify.

A. No. I can't say they were moving around any. There were a few lights there, but very few.

Q. (Mr. Lawrence Bogle) Were these two vessels headed on approximately parallel courses when you saw them?

MR. HAYDEN: I object to that as leading.

A. Yes, when I first saw them, you mean, when they first came in sight?

Q. No, what I mean is when you passed between them? A. Yes, yes sir.

MR. HAYDEN: I object to it as leading.

Q. (Mr. Lawrence Bogle) Could you make out the hull of the "Strathalbyn" as you passed between the "Virginian" and the "Strathalbyn"? A. Yes sir.

Q. Passed abeam of her? A. Yes sir.

Q. How far off were you when you passed abeam of the "Strathalbyn"?

A. Oh, between 100 and 150 yards. We were closer in on the "Virginian" than we were the "Strathalbyn"?

Q. Did you have any difficulty in making out the "Strathalbyn"?

MR. HAYDEN: Objected to as leading.

Q. (Continuing) —as you approached her?

MR. HAYDEN: Same objection.

A. Could I what?

Q. (Mr. Lawrence Bogle) Did you have any difficulty in making out the "Strathalbyn"?

MR. HAYDEN: I object to it as leading. I want these objections to run to it.

A. Well, we didn't have much difficulty, no, after she came in sight, we could see her whole outline.

Q. (Mr. Lawrence Bogle) You were then about how far distant? A. When we went between them?

Q. No, when you first saw her outline?

A. Oh, when I first seen her?

Q. Yes.

A. Oh, when she first came in sight she didn't loom up very plain, no, because it was kind of dim and kind of hazy, dark; but I should say we were—oh, when I first picked up the "Strathalbyn", she was a couple or three ship-lengths all right, when I first seen her.

Q. Could you see how she was loaded when you passed abeam of her?

A. Well, she seemed to be loaded pretty deep, she seemed to have a lot of junk on deck; I don't know, I took it to be lumber, I don't know what it was.

Q. On what deck was that?

A. Well, that is what is called the main deck.

Q. What is the size of the vessel you were on—the "Salmora"?

A. Her tonnage, do you mean, or her length?

Q. Her tonnage, approximately?

A. She measures 30 tons, I think.

Q. And what would be the height of her deck above the water?

A. What her—I want to understand you right—her main deck or—

Q. (Interrupting) Well, put it this way: About what was the height of the deck upon which you were standing when you saw the "Strathalbyn"—what was the height of that deck above the water?

A. Well, three feet.

CROSS EXAMINATION.

Q. (Mr. Hayden) What do you mean by a ship's length, Mr. Jackson? A. Ship length?

Q. Yes.

A. Well, I should say that is the length of the "Strathalbyn", as near as I could figure out her length.

Q. How long did you say the "Strathalbyn" is?

A. I should say between three and four hundred feet—or four or five hundred feet.

Q. When you speak of ship's length, do you mean 500 feet?

A. No, I would not say approximately 500 feet, because I don't know exactly the length of the "Strathalbyn".

Q. I want to find out what you mean by a ship's length, what distance do you give for a ship's length?

A. The length of the "Strathalbyn".

Q. Well, I want to know what you mean by it?

A. Well, then I say, if you want to see what I say she was, I would not say that I was right, but I would say she was approximately—I never saw the "Strathalbyn" only that one night, that is the only time I ever saw the "Strathalbyn" to notice her—I would say she was 450 or 475 feet long.

Q. Then when you said ship's length you meant something between 450 and 475 feet long? A. Yes sir.

Q. When you saw the red light of the "Strathalbyn", what direction was she from you?

A. She was on our port bow.

Q. And what direction from you?

A. A little ahead of us.

Q. I am asking the direction? A. The direction?

Q. Yes.

A. Well, I don't know how else I would give it to you. What do you mean, north, east, south or west?

Q. Yes. A. She would be north of us.

Q. When you speak of north, do you mean directly north?

A. No, no, not directly north, I would not say she was due north; she would probably be westward of due north. In a northerly direction.

Q. Was she on the line of your course between Robinson and Pully Point? A. On the line?

Q. Yes. A. What do you mean?

Q. Would she be on your course?

A. On our course? No, she would not be dead on our course.

Q. Which side of your course would she be on?

A. She would be on the port side of our course.

Q. She would be on the port side of your course?

A. That is, we are in the position of our ship; in the position from her, she would be on the starboard side of our course; I am speaking from the position of the ship that I was in, she was on the port side of us.

Q. I am talking about your course, though.

A. Yes.

Q. What side of your course was she on?

A. She was on the port side of our course.

Q. Who was master of the "Salmora"?

A. Draper was at that time.

Q. And you were doing what?

A. I was running the engine.

Q. What was the speed of the "Salmora"?

A. Oh, she made about nine knots.

Q. The atmosphere was clear that night, was it not, at the time—

A. (Interrupting) Perfectly clear, yes sir.

Q. It was a good night for seeing lights, wasn't it?

A. Yes sir.

Q. What other ships did you see, if any?

A. I saw the "Flyer".

Q. Did the "Flyer" pass you? A. Yes sir.

Q.. Where were you and the "Flyer" when you passed each other? That is, your distance between Robinson Point and Pully Point?

A. Oh, that I don't know, I would not say, because I was down in the engine room when we passed the "Flyer"; I was looking out through the engine room window when we went by the "Flyer"—I suppose it was the "Flyer"; that is the only one that I can figure it out to be.

Q. Where was the "Salmora" when you came on deck between Robinson Point and Pully Point?

A. Where was she at?

Q. Yes, when you came out on deck what position was the "Salmora" in as between Robinson Point and

Pully Point, was she closer to Pully Point than Robinson?

A. No, I fancy she was a little closer to Robinson.

Q. When you first came on deck?

A. When I first came on deck.

Q. Did you take any special notice of that? A. No.

Q. Did you take any special notice where the "Strathalbyn" and the "Virginian" were lying with respect to the distance between the two points at the time you passed them? A. No.

Q. Do you know whether it was nearer Robinson's Point or Pully Point?

A. At the time we went between the two of them?

Q. Yes.

Q. Well, no, I think it was—if any, it was a little bit nearer Pully Point. But I don't know, I have never seen the log book since, I don't know what time we passed Robinson Point, nor I don't know what time we passed Pully Point.

Q. But your present recollection is, you think they were closer to—

A. (Interrupting) I think she was nearer Pully Point.

Q. What do you mean by saying that the "Strathalbyn" was sort of headed toward Robinson Point?

A. Well, he asked me what course she was on. Well, now, what course she was on I don't know, only it must have been a southwesterly course, because she looked to me as if she was headed a little inside of Robinson Point instead of outside of Robinson Point. You understand what I mean.

Q. Yes, I understand what you mean. And you say that the "Strathalbyn" at that time was backing?

A. She appeared to be backing, yes.

Q. How did you judge that? A. How?

Q. How did you judge that?

A. How did I judge that? Because her bow seemed to be swinging off.

Q. Swinging off—what do you mean by "swinging off"?

A. Swinging off. She was backing to port. When she started to back she backed this way.

Q. What direction was her bow swinging?

A. Her bow was swinging to starboard.

Q. Swinging to starboard. You say her bow was swinging to starboard when you first saw the loom of her?

A. Oh, no; oh, no; when I first saw the loom of her I don't know how her bow was swinging or whether she was moving at all or not.

Q. You could not tell that?

A. I could not tell.

Q. Then how could you tell her bow was swinging to starboard? At what time did you notice her bow was swinging to starboard?

A. We noticed her bow was swinging to starboard when she opened up the "Virginian's" starboard light and showed her port light.

Q. And you say the "Virginian" was moving ahead?

A. The "Virginian" appeared to be moving ahead a little. Of course at the time that I first saw them I don't know whether she was moving or not—whether either one of them was moving or not—but we could not tell.

Q. What position were you in when you noticed that the "Virginian" appeared to be moving ahead?

A. What position?

Q. Yes, how far away—

A. (Interrupting) I didn't notice—as a matter of fact, I didn't notice whether the "Virginian" was moving at all or not until we got pretty near between the two of them.

Q. Did you cross the bow of the "Virginian"?

A. No sir, never, at no time.

Q. Did you cross the bow of the "Strathalbyn"?

A. We did, yes sir.

Q. Then you came up on the starboard side of the "Strathalbyn"?

A. No, came up—when we passed her?

Q. Yes.

A. No, we didn't come up on the starboard side of the "Strathalbyn". We did too, the way she was lying, she appeared to be lying across, she appeared to be lying

across like that, when we came up; we approached her on the starboard side, yes, but we didn't come up on the starboard side.

Q. You can't get anything into the record with your fingers that way, you know, Mr. Jackson.

A. No, I know.

Q. She appeared to be how when you came up to her, heading which way?

A. She appeared to be heading broadside to, to us, or nearly broadside to.

Q. Which way was she heading?

A. She was headed—well, that would be south, in a southerly direction.

Q. That would not be broadside to your course?

A. Well, it would be pretty near broadside to our course.

Q. Well, give the compass directions?

A. Well, she was headed in towards Pully Point, in that way.

Q. What was?

A. The "Strathalbyn", right across the "Virginian".

Q. Was headed in towards Pully Point?

A. Well, in, inshore, in towards that shore.

Q. When did you see her headed that way?

A. When I first seen her?

Q. Well, then she would be on a northerly direction then? A. No, she would not be on a northerly direction.

Q. When she was headed toward that Point she would be.

A. In towards Pully Point don't understand, because she was this way, I say she was heading in on that inshore side, the Pully Point side. You understand what I mean.

Q. What course do you take between Robinson Point and Pully Point?

A. I don't know. I never noticed her course. We steered a northerly course, we were coming in a northerly direction; now, just what her course is I don't know.

Q. Suppose the course was northwest by north half north—suppose that is the course— A. Yes.

Q. (Continuing) —how would the "Strathalbyn" be heading, if that were the course that you were steering, when you first saw her?

A. Northwest by north half north?

Q. Yes? A. How would she be heading?

Q. Yes.

A. Well, then I would say she would be heading about north by east—northeast—somewhere in there. If we were headed northwest by north—did you say north by north and half west or north by west and half west?

Q. No, northwest by north and half north?

A. Well, if we were heading—no, she would not be that way, neither, she would be further around; if we were heading northwest by north and half north, she would be away around about east by south, that is where she would be.

Q. About east by south?

A. East by south, somewhere in there.

Q. That is the direction you first noticed her in?

A. Yes sir.

Q. When she was lying about broadside to you with her starboard side to you?

A. With her starboard side to us?

Q. Well, about broadside to you?

A. Yes; well, about.

Q. About right angles to your course—is that what you mean?

A. Yes. Of course we could not see it, it was dim, we could just barely see the outline of the ship, that is all.

Q. You said, if I understood you correctly—I don't want to try to catch you at all, I want to get it as you saw it—when was it that you saw her heading inside of Robinson Point? A. When was it?

Q. What position were you in?

A. Oh, we were still in the same position, we never changed any, we kept coming along.

Q. Yes, I know, but what I mean is with respect to the "Strathalbyn" and "Virginian"?

A. Well, that is when we—when she opened up her port light.

Q. Yes, naturally.

A. You want the distance we were off?

Q. No—yes, that will do.

A. She was bearing about two or three points at that time.

Q. Two or three points off your bow?

A. Off our bow, yes.

Q. Off your port bow? A. Yes.

Q. And how was the "Virginian" bearing at that time, from you? A. The "Virginian"?

Q. When you first saw the "Strathalbyn's" port light, how was the "Virginian" bearing from you.

A. She was bearing I should say probably a point, point and a half.

Q. Off your port bow?

A. No, off our starboard bow. No, not that much, but I should say—

Q. (Interrupting) There was a difference of three to four and a half points in the position of the vessels from where you were at the time you saw the "Strathalbyn's" red light? A. Yes.

Q. You say you saw the "Stratahlbyn's" red light, as I understand it, when you were about abeam of the "Strathalbyn"? A. No, no.

Q. Was it a masthead light?

A. Masthead light? I saw the side light before I saw the masthead light. I didn't see the masthead light until I got pretty near abeam of it.

Q. I see.

A. I say it looked—the masthead light, when I seen it, it looked to be shining over the port side. Whether it was or not I would not say, but that is the way it appeared to be.

Q. You saw the "Starthalbyn", then, a considerable time—saw the outline of her a considerable time before you saw her red light?

A. Yes. Well, considerable time—it was not such a son-of-a-gun of a long time; it was quite a while, too.

Q. How long would you say it was?

A. Oh, I would not say how long it was.

Q. Quite a space of time, though, was it?

A. It was quite a space of time, yes.

Q. Did you at any time notice the "Strathalbyn" going ahead? A. No, I don't believe I did.

Q. When the "Strathalbyn" was broadside to you, having her starboard side to you, when you first saw her in that position, as I understand it, the "Virginian" must have been on the opposite side of her so that you could not see her lights? A. Yes sir.

Q. In other words, it would be sort of north of her? A. Yes.

Q. You being to the southerly?

A. She was on the port side of her and we were on the starboard side of her.

Q. Did you see the "Virginian's" green light while the "Strathalbyn" was lying across your course?

A. No sir.

Q. You did not see the "Virginian's" green light until the "Strathalbyn" was headed, as you say, what appeared to be a little inside of Robinson's point?

A. Yes sir.

Q. And then you saw the "Virginian's" green light?

A. Yes sir. Appeared to us as if the "Strathalbyn" was backing away from her and she opened up the "Virginian's" starboard light or green light.

Q. So before the "Strathalbyn" was backing away from the "Virginian" she must have swung from that easterly direction around over until she was heading up towards Robinson's Point light—

A. (Interrupting) Yes.

Q. (Continuing) —a little inside of it?

A. Yes sir.

Q. You say the "Virginian" was going ahead?

A. She appeared to be going ahead when we went by her, yes sir.

Q. What did you judge she was going ahead by, what objects did you compare her motion to?

A. We didn't have no object to compare her motion by, any more than she just simply appeared to be going by, by her lights in the water; but we could darn soon tell if I had thought about to look to see whether her wheel was turning or not, but I never noticed to see whether her wheel was turning or not. All we judged is just simply by the water and the ship.

Q. When you first saw the "Strathalbyn's" masthead lights, how were they bearing from you?

A. "Strathalbyn"? Bearing pretty near abeam.

Q. When you first saw the "Virginian's" masthead lights, how were they bearing from you?

A. They were bearing pretty near dead ahead.

Q. On which bow did you have them, do you remember?

A. Oh, I don't know as it was on any bow. It appeared to me, as near as I can remember—when I first saw them they appeared to be pretty near dead ahead, might have been a little on one bow or the other; I never noticed that very strong; I saw the lights was there and that is all there was to it. Practically dead ahead.

Q. When you first saw the "Strathalbyn", you noticed her by the loom of her? A. Yes sir.

Q. And you were two or three ship-lengths away from her—that is your idea about it? A. Yes.

Q. Don't you think you were further away from her than that?

A. Well, no, I don't hardly think I was; I don't think—if we had been further away than that I don't think we could have seen her. She might have been—

Q. (Interrupting) I am thinking of the position she was in, however, she had to turn 90 degrees or more—

A. (Interrupting) Yes.

Q. (Continuing)—after you saw her? A. Yes.

Q. Your vessel was going nine knots an hour?

A. No, she was not going nine knots an hour at that time. You were asking me what the speed of the "Salmora" was and I gave you her average speed, nine knots; you didn't ask me how fast she was going at that time.

Q. Tell me how fast she was going at that time.

A. That is something I could not say. She was not going nine knots an hour. She can only make nine knots when she is perfectly light and in good condition, and when you come over there it is pretty hard to gauge the speed of a gas boat that way, and she was loaded right down and I would not attempt to say how fast she was going. Something I never kept no track of.

Q. Then you can't say that she was not going nine knots, can you, if you didn't keep any track of it?

A. Yes, I can say she was not going nine knots

Q. You can't say she was not going eight knots, can you? A. How?

Q. Can you say she was not—

A. (Interrupting) No, I can't say she was not going eight knots, but I can say she was not going nine knots.

Q. She was going somewhere between eight and nine knots, then?

MR. LAWRENCE BOGLE: I object to that. The witness did not testify to that.

MR. HAYDEN: I am asking him a question.

A. I would not say she was going between eight and nine knots, because I don't know; but she was not going nine knots, because she can only make nine knots when she light and clean. I have had a log over on her two or three times; sometimes she would be seven knots; sometimes she would go eight knots.

Q. You don't know the time you left—

A. (Interrupting) No, I don't—Tacoma.

Q. (Continuing) —Tacoma. You don't know the time you got to Robinson's Point? A. No.

Q. And I presume that can be figured out?

A. That can be figured out from the log.

Q. Suppose you were going eight knots an hour, don't you think if you were going eight knots an hour that you would be more than two or three ship-lengths off when you saw that hull, if she had to turn—the "Strathalbyn" had to turn—

A. (Interrupting) Oh, I don't know—

Q. (Continuing) —that distance?

A. I hardly think so.

Q. Do you know how long it would take you to go 900 feet, going at eight knots an hour?

A. 900 feet. No, I could not tell you right off-handed.

Q. How many feet in a knot? A. 6,080.

Q. Then, as I figure it, you would go 410 feet in a minute.

MR. LAWRENCE BOGLE: We object to that unless the witness figure it himself. He is testifying, you are not.

A. Is that what you figure it at, four hundred and what?

Q. (Mr. Hayden) 410 feet in a minute.

A. How fast, how many knots an hour?

Q. Eight knots an hour.

A. Eight knots an hour, she will go 410 feet a minute?

MR. LAWRENCE BOGLE: You can have the witness testify or figure that out, but I object to the witness taking your figures.

Q. (Mr. Hayden) Well, look over my figures, Mr. Witness (handing paper to witness).

MR. LAWRENCE BOGLE: Figure it out yourself, if that is what he wants.

A. (Witness examines figures made by Mr. Hayden.)

Q. (Mr. Hayden) Do you understand the way that is figured? A. Yes.

Q. Are those figures right? A. Yes, that is right.

Q. Don't you think you must have been a little further away? A. No.

Q. (Continuing) —than two ship-lengths?

A. I said two or three ship-lengths.

Q. Well, three ship-lengths. Don't you think you must have been a little further away than three ship-lengths? A. No.

Q. You don't? A. No.

Q. Now, the first thing you saw, then, was the outline of the hull lying at right angles to your course—the hull of the "Strathalbyn"? A. How?

Q. The first thing you saw was the outline of the hull of the "Strathalbyn", lying at right angles to your course?

A. The first thing I saw was—that is of the "Strathalbyn"—

Q. Yes.

A. (Continuing) —was the fore part of her hull, yes.

Q. Was the fore part of her hull?

A. The fore part of her hull.

Q. Didn't you see the after part of her hull?

A. I suppose I could have seen the after part of her hull if I had took particular pains to notice it, but I never noticed it.

Q. How is it you happened to notice the fore part particularly?

A. Because I was looking at the "Virginian", for the "Virginian's" side lights. We didn't know that there was two ships there until we saw the "Strathalbyn". What was worrying us was where the side light of this other ship was; we seen her headlight and we seen her range light and they appeared to be directly dead ahead of us. If they were in that position, which they certainly showed, then we should have seen her side lights. Now, why didn't we see her side lights?

Q. You were worrying about that, were you?

A. We were worrying about that.

Q. What were you worrying for? A. How?

Q. Why were you worrying?

A. Because we were in a damn bad predicament.

Q. Why?

A. We didn't know whether to go this way or that way.

Q. Why were you worrying, in a damn bad predicament, when you could see the range light and masthead light of the "Virginian"? A. Why?

Q. Yes.

A. Well, now, that don't do you but damn little good; you don't know what they are going to do.

Q. Aren't they amidships? A. Yes.

Q. And they are in line with each other?

A. They are in line with each other, yes.

Q. And you can tell which way a vessel is going or heading? A. You can, certainly you can.

Q. What were you worrying about, then, if you knew what way she was going?

A. We were worrying about her side lights. I don't say we were worrying, we wasn't nervous, because we could have turned around and run off the other way.

Q. That is what I thought.

A. But that is not navigation; that is not navigation, you see.

Q. So you were not worrying at all, then?

A. Well, not to be—we were not worrying, if you want to call "worrying" to be scared or nothing like that; we were not scared; nothing like being scared, no, not a bit of it; we could have turned around and run out of the way. We can turn around in our own length, but the question was, where was her light? When you are passing a ship, you look for either one light or the other—either a red light or a green light.

Q. With respect to the time of seeing the red light of the "Virginian", how long before or after you saw the red light of the "Virginian" was it before you saw the green light—or the red light of the "Strathalbyn" before you saw the green light of the "Virginian"?

A. Before I saw—what was the question?

Q. How long after you saw the red light of the "Strathalbyn" was it before you saw the green light of the "Virginian"?

A. I saw them practically at the same time, nearly the same time.

Q. How far off was the "Virginian" from the "Strathalbyn" at the time you first saw the red light on the "Strathalbyn"?

A. How far were they apart, you mean?

Q. Yes. A. The two ships?

Q. Yes.

A. Oh, I don't know. Let's see, oh, I should say was between 150 and 200 yards, somewhere in that neighborhood.

Q. How far off was the "Virginian" when you passed her, between the two vessels—going between the two vessels? A. How far off from us, do you mean?

Q. Yes.

A. Oh, I should say between 40 or 50 yards, I guess, somewhere along there; maybe not that far.

Q. Did you notice any light at all, other than the lights you have mentioned, on the "Strathalbyn"?

A. Other than the headlight and side light, you mean?

Q. Yes.

A. The lanterns—I call them lanterns around on deck.

Q. Did you notice any lights in the rooms?

A. I never noticed any.

Q. Didn't notice any? A. I never noticed any, no.

Q. You would not say they were not there, would you? A. No, I would not say they were not there.

Q. You would not say they were not showing through the port holes, would you?

A. Well, I never noticed any. I would not say that they was not, no. I never noticed any.

Q. How far away was the "Flyer" from these two vessels when you passed them?

A. Well, that I don't know; that I would not say.

Q. How long after you passed the "Flyer" before you came on deck?

A. Well, I don't know; it is quite a little while; I was fooling around the engine there.

Q. Do you remember what you were doing around the engine after you passed the "Flyer"?

A. No, I don't; I was fooling around there doing something, trying to get wise.

Q. About how long do you suppose you were down there fooling around the engine?

A. Well, I would not say, because when a man is fooling around time goes pretty quick sometimes.

Q. There was quite a little while, wasn't there?

A. There seemed to me to be quite a little while, yes; I would not say how long.

Q. What does it seem like now, in time, to you?

A. Well, I would not attempt to say, because I might say an hour and it might be five minutes, and I might say a half an hour and it might be twenty minutes; I don't know; I never took no particular notice of it. I stuck my head out of the window when the "Flyer" went by and I never paid any more attention, any more than I know I was fooling around the engine room.

Q. How long was the red light of the "Strathalbyn" in view after you first saw it? A. How long?

Q. Yes.

A. Oh, it was not in view very long, because we we went by it.

Q. I know you did. I want to know how long it was. A. Oh, a few minutes—darn few.

Q. Naturally, but I want to know how long?

A. Well, don't know. Understand, I was not in the wheel house, I was on deck; I was not running the ship; if I had been running the ship I might have been taking that thing all into consideration, but I was not.

Q. You mean to say you don't know—is that it?

A. I don't know just how long it was before we shut it out, because you have only got to go two points abaft the beam from the ship before you shut it out.

Q. Did you see it as much as a minute, do you suppose? A. No, I don't believe it was a minute.

Q. Did you see it while you were traveling 400 feet? A. What?

Q. Did you see it while you were traveling 400 feet?

A. No, I don't know. Might have been, but I don't think it. When we saw it, it was in pretty close quarters when it opened up.

Q. It was simply a glimpse you got of it, then—is that is?

A. A glimpse? Well, you would not call it a glimpse, either. If you glimp at anything you simply look at it. We see it from the time it opened up, that is, dead ahead, until it was two points abaft the beam.

Q. You saw the "Strathalbyn's" light—I think you are wrong there, aren't you?—the red light of the "Strathalbyn", is that what you are talking about?

A. Yes.

Q. Did you go on the starboard side or port side of the "Strathalbyn"?

A. We went in on the port side of the "Strathalbyn".

Q. You crossed upon the port side of the "Strathalbyn"? A. Yes.

Q. Then the "Virginian" was on the port side of the "Strathalbyn" too? A. Yes.

Q. When you passed between the "Strathalbyn" and the "Virginian", how much further north—or what was the distance between the bow of the "Strathalbyn"—or the stern of the "Strathalbyn" and the bow of the "Virginian" in, say, a northerly direction?

A. What was the difference between the stern of

the "Strathalbyn" and the bow of the "Virginian" in a northerly direction?

Q. Yes. A. In a northerly direction?

Q. Yes. A. Well, that I don't know.

Q. The "Virginian", as I understand the positions, must have been somewhat to the east—

A. (Interrupting) Yes.

Q. (Continuing) —of the "Strathalbyn"?

A. Yes.

Q. Now, I want to know what the distance was, how much further north she was away from the "Strathalbyn" when you went between them?

A. Oh, that I don't know. I don't remember how far she was.

Q. Well, the vessels were not right opposite each other? A. No, no. No, they were not opposite.

Q. The "Virginian" was north of the "Strathalbyn"?

A. The "Virginian" was north of the "Strathalbyn" all right.

Q. And to the eastward of her? A. Yes.

Q. You don't know what time it was that you passed these two vessels? A. No, not exactly.

Q. You didn't see the collision, then? A. Oh, no.

Q. Didn't see the vessels before the collision?

A. No.

Q. Do you know how long it was between the time the "Indianapolis" passed you—

A. (Interrupting) No sir.

Q. —and the time you got up there? A. No sir.

Q. You don't know the time the "Indianapolis" passed you? A. No sir.

Q. Don't know where she passed you? A. No sir.

Q. Didn't see her pass?

A. I didn't see the "Indianapolis" at all.

Q. You say you saw the masthead light when you got pretty near abeam? A. Yes sir.

Q. How much did it lack of being abeam before you saw the masthead light?

A. How much did it lack of being abeam?

Q. Yes.

A. Lacked about an eighth of a point, quarter of

a point; I was a little forward of the beam, I was standing a little forward. It was right dead abeam of me when I seen it.

Q. Right dead abeam of you? A. Of me.

Q. You are talking about when the ship was abeam?

A. What?

Q. That is when it was abeam of your ship?

A. When it was abeam of me. It was not abeam of the wheel-house.

Q. You were forward of the wheel-house?

A. I was forward of the wheel-house.

Q. How many feet forward?

A. Oh, I was probably five or six or six or eight feet. I was standing on the hatch.

Q. When it was abeam of you—when you picked the light up it was on your beam?

A. It was on my beam, yes.

Q. And your vessel had been swinging around there to avoid these two ships?

A. Well, he had been working it around, I suppose; not very much, though, he could not have been wiggling around a whole lot, because I never noticed it any, I never noticed him wiggling around any. Of course there was nothing there for me to tell that he was moving around by, she has got no jack-staff or nothing.

Q. And you were looking over the bow?

A. No, I didn't look over the bow particularly.

Q. You saw them coming up right ahead of you?

A. I saw them coming up, yes, but how much he changed his course, I don't know, how much he altered it; I could not say whether he altered it at all or not; he must have altered it some, but how much I don't know.

Q. Was your vessel then at right angles to the "Strathalbyn" when you saw this light abeam of your vessel? A. Oh, no.

Q. How was it compared with the "Strathalbyn"?

A. That is after she had backed clear.

Q. How did the course of your vessel compare with the course of the "Strathalbyn" at the time you say that you saw this light abeam of your vessel?

A. It would be just opposite.

Q. Right parallel then?

A. Yes, only she was steering the direct opposite course than what we were, any more than she looked to be a little more inside.

Q. Do you remember about how long it was that you saw this masthead light?

A. No, I don't. I remember seeing it, and he says to me then, he says, "That's a damn poor headlight, ain't it?" I says, "It looks pretty dim all right." I never noticed it any more, I just simply looked at it, but I suppose we looked at it there possibly thirty or forty seconds, just took a good look at it. Just took a good look at it.

Q. Did you look at the vessels after you passed them at all?

A. I turned around and had a look. We didn't see anything that was out of the way. We saw the ships there. I don't know how far it was. We got beyond her before we could see him—or before we shut him out. We saw him for that little time, of course.

Q. What did you see?

A. We saw the lights of the "Virginian".

Q. What did you see of the "Strathalbyn"?

A. Saw the "Strathalbyn", that is all we saw.

Q. Did you see any lights on her at all?

A. Well, I saw—as I told you before, I saw these lanterns, it looked like to me—these lanterns, that is all; she seemed to have—after we got by entirely, the last thing I saw of the "Strathalbyn", whether it was a lantern or whether it was meant for a stern light or what it was, I don't know.

Q. But you saw a light there, did you?

A. I saw a light on her stern. As to what it was, I don't know. That is the last thing I saw of the "Strathalbyn". Whether it was a lantern or whether it was meant for a stern light—

Q. (Interrupting) That would be naturally the last thing you would see of her?

A. Well, it is supposed to be the last thing you see, is a stern light.

Q. That is what I thought.

A. It didn't appear to be—

Q. (Interrupting) Do you know what position you were in when the masthead light went out of view?

A. No.

Q. Of the "Strathalbyn"? A. No.

Q. Whether you were abaft of her beam or not?

A. No, I don't. We wasn't abaft her beam when I looked at it—that is, we were not abaft of her beam.

Q. That is, I mean when you last saw it were you abaft of her beam?

A. When I last saw it we were not abaft of her beam, no, but I did not notice the headlight no more after he looked at it there and he was talking about it a second or so, I never noticed it any more.

Q. Did the red light appear to be about the same degree of brightness from the time you first saw it until you got opposite it and went out of view?

A. Well, no, I don't know as it did. It is bound to be a little bit dimmer when you first see it than when you get abeam of her; when you get the lens just exactly right they are bound to loom up more, and it was naturally dimmer when I first saw it than—

Q. (Interrupting) How did it look when you got abeam of it, was it a pretty bright light?

A. No, it was not bright. It was a very rotten light for a side light.

Q. You say it was a rotten light? A. Yes sir.

Q. You don't know how far you could see it, do you? A. Don't know how far I could see it?

Q. Yes.

A. No. Well, I would not say just exactly how far I could see it, but I could not see it no two miles, that is a cinch.

Q. You don't know how far you could see it, do you? A. I know you could not see it no two miles.

Q. You were in no position to tell that at any time, were you?

A. Well, you can pretty near tell if you see a light, you can pretty near tell.

Q. I am asking you this question: Were you in a position to tell whether you could see it two miles or not?

A. We were not off two miles to see it, but if we had been two miles off we could not have seen it.

Q. That is your opinion of it?

A. That is my opinion of it, yes.

Q. The night was a perfectly clear night, was it?

A. Yes sir.

Q. The atmosphere was clear?

A. The atmosphere was clear, as clear as it always is around the bays here.

Q. You could see lights very well that night?

A. Yes sir.

Q. And you saw the light quite clear as you got opposite it?

A. It loomed up a little brighter when we got right opposite it, yes sir.

Q. You are used to electric lights on vessels, aren't you? A. I am used to both.

Q. On sailing vessels? A. How?

Q. Do you work on sailing vessels?

A. Steamships.

Q. How old are you? A. Twenty-nine years old.

Q. Did you ever burn Colza oil in your lamps?

A. Sir.

Q. Did you ever burn Colza oil in your lamps?

A. Colza oil? Not that know of.

Q. Never did? A. Not that I know of.

Q. What kind of oil do you burn in the lamps you have been used to?

A. Well, I have burned nut oil, burned kerosene.

Q. You don't know what they call a nut oil, do you—the name of it? A. The Chinese nut oil.

Q. You don't call it Colza oil, do you?

A. Well, I don't know. That is all I know it by, is Chinese nut oil—burned that, and then this headlight oil, kerosene.

Q. When you saw the masthead light did it appear to be dim, and, if so, how far would you judge in your opinion you could see it?

A. Well, it appeared to be dim and appeared to be smutty; that is the way it looked to me.

Q. How far would you judge probably you could see it?

A. Oh, I should judge probably you could see it—oh, if a man would look he could probably see it—I would

not say that he could see it over 300 feet; I would not say that you could see it that far, but not over that. That is my opinion of it.

Q. What is the distance you are supposed to see the white light?

A. Two miles, three miles—headlight, you mean?

Q. Yes.

A. No, five miles; side lights two miles.

Q. What would you say in your opinion would be the distance you could see the side light on this night in the condition it was in?

A. Well, I don't think it was visible over a mile.

Q. The side light? A. Side light.

Q. Do you think you could see it a mile off?

A. Well, I don't know. I will give a mile, but I don't think you could see it over a mile. That is my opinion of it. Of course a mile is quite a ways and a light has got to be a pretty good light.

Q. So that the masthead light seemed to be a good deal dimmer than the side light?

A. Oh, yes; yes, a good deal; it appeared to be smut—black; that is the way it looked to me.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) How far away did you see the masthead light, Mr. Jackson?

A. Oh, I don't know how far it was.

Q. You saw it when you were abeam?

A. When I was abeam, yes.

MR. HAYDEN: Don't lead this witness, please.

MR. LAWRENCE BOGLE: Now, just a minute.

MR. HAYDEN: I am going to get my objection in.

Q. (Mr. Lawrence Bogle) You were approaching this vessel, did you say on the starboard side?

MR. HAYDEN: I object to it as leading.

A. What?

Q. (Mr. Lawrence Bogle) When you first—

A. (Interrupting) Approaching the "Strathalbyn" on the starboard side?

MR. HAYDEN: Objected to as leading and immaterial, not proper re-direct.

Q. (Mr. Lawrence Bogle) I say, you testified you were approaching the "Strathalbyn"—appeared to be

approaching her from the starboard side when you first saw her outline?

MR. HAYDEN: Objected to as leading.

A. Yes, sir.

Q. You think she was heading in what direction at that time? A. Easterly, a little south of east.

Q. If she was headed in that direction, was she in a position where you should have seen her masthead light?

MR. HAYDEN: Objected to as immaterial.

A. Yes, I think she was; if her headlight had been in the proper position, I think that we had ought to have been able to have seen it.

Q. (Mr. Lawrence Bogle) When you first saw the outline of this vessel, could you make it out very plain?

A. No, sir.

MR. HAYDEN: Objected to as leading.

Q. (Mr. Lawrence Bogle) Could you tell accurately in which direction she was? A. No, sir.

MR. HAYDEN: Objected to as leading.

A. We could tell—

MR. LAWRENCE BOGLE: Let your objection run to all this.

MR. HAYDEN: No, I won't. I am going to put it in separately.

MR. LAWRENCE BOGLE: Well, all right, I don't care.

THE WITNESS: We know she was headed across. In just exactly what position she would be in, whether she would be right dead angle across us or whether a little diagonally across us I could not tell, but we knew she was headed in that way; that is all we could tell.

Q. In the way that you were headed, did you at any time cross her bow?

MR. HAYDEN: Objected to as leading.

A. Yes, sir.

Q. (Mr. Lawrence Bogle) Did you at any time see her starboard light?

MR. HAYDEN: Objected to as leading.

A. No, sir, I didn't.

Q. (Mr. Lawrence Bogle) Did you see her masthead light when you were crossing her bow?

MR. HAYDEN: Objected to as leading.

A. No, sir.

Q. (Mr. Lawrence Bogle) How far away do you think you were when you saw her port light, red light of the "Strathalbyn"?

A. Oh, when I first saw it you mean?

Q. When you first saw the "Strathalbyn's" port light?

A. Oh, I don't know, we wasn't very far away; I wouldn't say, because we were in pretty close quarters when she opened up. Just how far to put it I don't know; we were in pretty dogon close quarters when she opened up.

Q. Were you a mile away?

A. Oh, no. A mile? No.

Q. Then you don't know whether you could see her port light a mile or not?

MR. HAYDEN: I object as leading.

A. No, I don't, but we were never no mile off from it, but the way it looked to me, the way the light was burning there, it didn't look as though it would be visible for any mile.

Q. Do you think it would be visible a half a mile?

MR. HAYDEN: I object to that as leading.

A. Yes, I think it would be possibly visible a half a mile all right.

Q. (Mr. Lawrence Bogle) Did you testify that you were going eight knots an hour on this night, or 400 feet a minute? A. No, sir, I did not.

Q. In testifying as to courses, did you have any compass or any shore point from which to figure out the bearings and courses of the vessels?

A. I did not, no, sir.

Q. You testify merely to approximate courses?

A. Merely an approximate course. If I had been in the wheel-house—I said if I had been running the vessel I would have been able to tell. Captain Draper can tell you more about that than I can, because he was in the wheel-house and he knows what course he was steering, what time he came by these points.

Q. Did you have anything to do with the navigation of the vessel?

A. No, sir, none whatsoever, except when we were on a long run; if we were on a long run, of course we would take turn-about, he would run her so long and I would run her so long.

Q. Do you remember very clearly at this time how long you were below after the "Flyer" passed you?

A. No, sir, I don't.

Q. What lights did you have on the deck of the "Salmora"?

MR. HAYDEN: I object to that as immaterial.

A. I had two side lights and a masthead light and a main light.

Q. Were they oil or electric?

MR. HAYDEN: I object to that as immaterial.

A. Oil.

Q. (Mr. Lawrence Bogle) How did your lights compare with the lights on the "Strathalbyn"?

MR. HAYDEN: I object to it as immaterial and incompetent.

A. Well, we have got good lights on there, we have got fine lights, better than the usual oil lights of their size.

Q. (Mr. Lawrence Bogle) How do they compare with the "Strathalbyn's" lights?

MR. HAYDEN: I object to that as immaterial and incompetent.

A. They were a whole lot brighter than the "Strathalbyn's", because you could see our lights—you could see them easy two mile.

Q. (Mr. Lawrence Bogle) What was the appearance of the stern light or the light you saw on the stern of the "Strathalbyn," was that a bright light or dim light?

MR. HAYDEN: Objected to as leading and immaterial and incompetent.

A. I would not say that it was a range light, I didn't say that it was a range light—I say it might have been a range light—or a stern light, rather.

Q. (Mr. Lawrence Bogle) Stern light?

A. But it didn't appear to me to be in the right position to be a stern light. I know there was a light there, but whether or not it was a stern light I don't

know, I would not say it was nor I would not say that it was not.

Q. Had the appearance of a lantern, you say?

MR. HAYDEN: Objected to as leading.

Q. Had the appearance of a lantern.

Q. (Mr. Lawrence Bogle) Mr. Jackson, did you know, when approaching these two vessels, that there had been a collision or any trouble between them?

A. No, sir.

Q. You stated that the masthead light appeared to be shining over the port side. I wish you would explain what you mean by that.

A. Well, it appeared to be kind of canted off to one side over the port bow, instead of shining straight ahead.

Q. Could you see where that light was hung on the "Strathalbyn"?

A. Well, it appeared to be—it was hanging—it appeared to be hanging—seemed to be up on the fore-stay.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) How big a light did this mast-head light appear to be to you? A. How big?

Q. Yes, how much glass was exposed?

A. Oh, I would not say, because I don't think that I saw all the glass that was exposed, but the way it looked to me the light did not look over five inches, but I think there must have been a bigger light than that, but I don't think I saw the full width of the glass, I don't think that I saw it.

Q. Well, why do you say that?

A. Well, because it appeared to be—it seemed to shut out from right in the middle, it was brighter right in the middle and then shown dimmer out on the side. I don't think I saw the full length of the side of the light. In the same way, it seemed to be a little round spot right in the middle of it. That is the reason I think it was smutty, because it seemed to be a little round spot in the middle and then she would dim out both ways, up and down and on both sides. It looked just like it had been smoking and got smutted.

Q. You say there was about how much?

A. I should say about five inches. Of course I don't know—

Q. (Interrupting) Five inches. How much do you think you could have seen that light forward of the beam of the "Strathalbyn"?

MR. LAWRENCE BOGLE: Which light?

MR. HAYDEN: The masthead light we are talking about.

A. How much forward of the beam?

Q. Yes.

A. Oh, you could have seen it—you could have seen it ahead all right—you could have seen the headlight dead ahead, the way it was hanging.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Did you see the masthead light when you were dead ahead? A. No, sir.

Q. What makes you say that you could see it?

MR. HAYDEN: I object to his cross-examining his own witness.

A. What makes me say that I could see it? Well, if I could see it at all I could see it ahead. The light was there all right.

Q. You were dead ahead, though, weren't you?

A. How?

Q. You were in a position dead ahead?

MR. HAYDEN: Same objection, cross-examining his own witness.

A. We crossed right by her bows.

Q. (Mr. Lawrence Bogle) You did not see it then?

A. No, I never noticed it then.

(Witness excused.)

An adjournment was here taken until 1:30 o'clock p. m.

Afternoon's Proceedings, December 9, 1912.

PRESENT: Same parties as at former hearing.

M. C. ERISMANN, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) Your full name is M. C. Erismann? A. Yes.

Q. What is your business? A. Naval architect.

Q. How long have you been engaged in that business?

A. Actively engaged in yards since 1898.

Q. In what yard were you in 1898?

A. I was with William B. Stearns, of Marblehead, Massachusetts.

Q. Shipbuilders and constructors?

A. Yachtbuilders.

Q. And from there where did you go?

A. I went to the Gas Engine & Power Company and Charles L. Seabury, Consolidated, New York City.

Q. What other establishments have you been connected with since that time, Mr. Erismann?

A. After that time I was connected with the Maryland Steel Company and Marine Construction Company and Drydock, in New York, and at Fore River Shipbuilding Company, Quincy, Massachusetts, up to about a year ago.

Q. What concern are you connected with now?

A. Lee & Brinton, naval architects, Colman Dock.

Q. Mr. Erismann, did you make an examination of the steamship "Strathalbyn" as she lay in port at Tacoma in January of this year, after her collision with the steamship "Virginian"? A. Yes, sir.

Q. At that time had the deck cargo of the steamship "Strathalbyn" been removed, was there any cargo on her forward deck?

A. There was no cargo to speak of on her forward deck.

Q. Were there any stanchions in place on the forward deck? A. No, sir.

Q. Did you make any measurements of the steamship "Strathalbyn" at that time?

A. I inquired of the authorities aboard the ship whether such measurements could be made and was told that all the measurements would be presented at the proper time and that no measurements would be permitted to be taken.

Q. So you were unable to get any measurements at that time? A. Yes, sir.

Q. Did you make an examination, Mr. Erisman, of the position of the light screens on the lower bridge of the steamship "Strathalbyn"? A. Yes, sir.

Q. And of the general nature of the construction of the steamer "Strathalbyn"? A. Yes, sir.

Q. How does the superstructure of the "Strathalbyn"—how is it constructed, is it on a vertical line or does it tumble home? A. It tumbles home.

Q. Mr. Erismann, from your examination of the construction of this vessel and the construction of these light-boxes on the lower bridge, what would be your opinion as to the visibility of a light placed in the light-box on the lower deck, if a stanchion was placed say eight feet forward of that light-box, flush with the rail, in a vertical position, which was high enough so that it would be above the height of the light, in your opinion from your examination would you say that that light could be seen from ahead or nearly so?

MR. HAYDEN: I object to that as incompetent. The basis has not been sufficiently laid for the hypothetical question in the testimony in this case—any actual testimony in this case.

(Q. (Mr. Lawrence Bogle) In other words, Mr. Erismann, would a stanchion placed eight feet forward of the light-screens, flush with the deck, in a vertical position, twenty feet high, obscure the line of light?

A. From my observation—

MR. HAYDEN (Interrupting) Same objection, please.

Q. (Mr. Lawrence Bogle) That is all right, go ahead, answer.

A. From my inspection, as near as I could tell such a stanchion would interfere and diverge its rays from a point two miles ahead where both lights can be seen as required by law.

MR. HAYDEN: I move to strike out the part of the answer commencing with "from a point two miles ahead" as not responsive to the question, and this witness has not shown that he is acquainted with the law

or is an expert in the law, that he can testify as to what the law is. The witness is not qualified.

Q. (Mr. Lawrence Bogle) Mr. Erismann, was it your opinion at that time, from your examination, that this light could be seen from a point two miles directly ahead?

MR. HAYDEN: I object to that as leading and suggestive.

A. You could not see it from two miles—a point two miles ahead.

Q. (Mr. Lawrence Bogle) About how much would this ray of light be diverged from a line directly ahead, how much would this stanchion throw it off, in your opinion?

MR. HAYDEN: I object to that as no foundation in the testimony is laid for any such speculative answer, and on the ground that the answer is speculative.

A. From measurements, it would be about four or five degrees, in this particular instance, with a stanchion eight feet ahead of the light in its relative athwartship position.

Q. (Mr. Lawrence Bogle) So that there would be an area ahead where neither light could be seen?

MR. HAYDEN: I object to that as leading and suggestive.

A. Shall I answer that question?

Q. (Mr. Lawrence Bogle) Yes.

A. Yes, there would be an area in which the lights could not be seen.

Q. Mr. Erismann, did you make a careful examination of the nature of the damage to the steamer "Strathalbyn"? A. Yes, sir.

Q. I wish you would state, briefly, just what the nature of the damage suffered by the "Strathalbyn" was?

A. The plates on the port side were bent across the center line—fore-and-aft center line of the ship, towards the port side, and where those plates had been fastened to the stem they had broken away from the stem and the plates on the starboard side were crumpled up, with portions of the stem still attached, back on the starboard side about 30 feet. The deck-beams of the forecastle

head were broken and bent, some portions of which adhered to the wreckage which overhung the starboard side, and one or two beams about 25 feet aft of the stem, at a distance approximately of five feet from the center line towards the starboard side, had been bent aft towards the wreckage. The frames on the starboard side had been broken for over five frame spaces, canted with the wreckage. Those further aft had been left intact or in position, the rivets having been sheared off.

Q. How far above the water, Mr. Eismann, was the stem of the "Strathalbyn" broken?

A. Five feet above the water line, or to a point corresponding to the 30-foot draft marks, the plates were in their original position, the stem apparently having broken just above and gone aft with the wreckage which was seen on the starboard side.

Q. That portion of the stem up to the point of the break, was that injured to any extent, did it show any damage—that is, up to the 30-foot water mark, as I understood you to testify?

A. The stem apparently was intact, the plates having given way about five feet above the water line, the port side having bent over at that same distance, the plate edges having given way, leaving the lower plates intact, meaning by "intact" there that they were in their original position.

Q. Mr. Eismann, from your examination of the nature of the damage to the steamer "Strathalbyn", could you tell from what angle these two vessels must have struck, if, prior to the collision, the steamer "Strathalbyn" was drawing approximately 23½ feet and had a six-degree list to starboard, and that the steamer "Virginian" was on an even keel and standing considerably higher out of the water than the steamer "Strathalbyn"—from those facts and the nature of the damage, could you tell about the degree of the angle of contact at the point of collision between the two vessels?

MR. HAYDEN: Just a minute. Have you ever seen two vessels come together?

MR. LAWRENCE BOGLE: Oh, let him answer my question. You will get a chance to cross examine.

MR. HAYDEN: Never mind.

THE WITNESS: Who am I to answer?

Q. (Mr. Lawrence Bogle) You are to answer my question. You can answer his on cross examination.

MR. HAYDEN: Then I want to put in an objection, if you refuse to answer my question, on the ground that I have a right to determine whether this witness is qualified to make an answer to that question.

MR. LAWRENCE BOGLE: I have asked him whether from his examination and from his knowledge of these facts which have heretofore been testified to, if he could tell.

MR. HAYDEN: I object also on the ground that the question is not a proper hypothetical question and the witness has not shown from his experience that he is able to answer it as an expert witness.

Q. (Mr. Lawrence Bogle) Has it been a part of your business and experience to construct vessels and to repair them? A. It has.

Q. You have had considerable experience in that business? A. I have.

Q. Answer the other question now.

MR. HAYDEN: The same objection, as not qualified to testify about the question that has been asked. The question is not a proper hypothetical question, and does not contain all the facts and circumstances on which any witness should base an expert opinion.

Q. (Mr. Lawrence Bogle) From those facts, could you tell about the angle of contact? A. Yes.

Q. Just state in your opinion the angle at which these two vessels must have come together to have caused those injuries to the "Strathalbyn" under those circumstances?

MR. HAYDEN: Same objection, as incompetent.

A. From an inspection of the damage, the latitude is not very great as to exactly what happened; the boats must have come together very nearly headon.

Q. (Mr. Lawrence Bogle) I wish you would just explain your answer, Mr. Erismann?

MR. HAYDEN: Same objection.

A. That bending of the starboard plates and the crumpling up—the bending of the port plates and the crumpling up of the starboard plates could have only

been accomplished by a vessel hitting the "Strathalbyn" on the port side at a very small angle with the center line of the "Strathalbyn".

(Mr. W. H. Bogle, of proctors for respondent, claimant and cross-libelant, here appeared.)

(Last question and answer read.)

Q. (Mr. Lawrence Bogle) Could you tell, from your examination, Mr. Erisman, about where the point of contact between the two vessels was?

A. The point of contact was at the top of the forecastle deck of the "Strathalbyn".

Q. About how far from the top of her stem?

MR. HAYDEN: I object to that. The witness has not shown that he knows anything about where the stem of the "Strathalbyn" was.

Q. (Mr. Lawrence Bogle) Could you tell, from your examination, about where the point of contact was, Mr. Erisman?

A. It was at the level of the forecastle deck.

Q. I will ask you to examine that photograph and state whether or not that correctly represents the nature of the damage to the steamship "Strathalbyn" as it appeared at the time you examined it? (Handing claimant's exhibit "5-6" to witness).

A. Yes, it does.

Q. I wish you would explain in detail how that damage was caused by a collision at the angle which you stated.

A. How this damage was caused, is the question?

Q. Yes.

MR. HAYDEN: Same objection, that he has not qualified or shown that he is qualified.

A. The angle of list of the "Strathalbyn" to the starboard side, being hit by the bow of the "Virginian" on the port side immediately abaft the stem, the lower part of the stem of the "Strathalbyn" was on the starboard side of the bow of the "Virginian", the point of contact being at the level of the forecastle deck, which is of lighter material than that around the main deck, and by reason of the list being more or less unsupported, the bow of the "Virginian" impinged on the stem about at the level of the forecastle deck, in the vicinity of the

light forecastle deck plating, which gave way, the deck-beams of the forecastle deck and of the main deck started, the stem of the "Virginian" having broken and impinged on the starboard side plating of the "Strathalbyn", crumpled it before the stem of the "Virginian" as she collided. The plating in the vicinity of the water line of both ships rubbed together and fendered the "Virginian" off from following its true direction through the "Strathalbyn's" forward end. For the distance of 30 feet the plates were torn off and crumpled, at which point the momentum of both ships became nil.

Q. Does that point show on the photograph?

A. Not in this photograph; that is, the point shows, but without any ability to judge the distance back from the stem; but it was about somewhere in the neighborhood of 30 feet.

Q. Is this the point where the momentum of the two vessels stopped? (Indicating).

MR. HAYDEN: Objected to as leading.

MR. LAWRENCE BOGLE: He has testified to that point. You can cut that out.

Q. (Mr. Lawrence Bogle) I will ask you if you can show the point on that photograph where you have testified the momentum of the two vessels was stopped?

A. It was somewhere in that neighborhood, a certain amount of tearing and bursting accompanying the collision.

Q. Mark it "A" about the point.

A. Mark the point there "A" on the photograph?

Q. Yes. A. (Witness does as requested).

Q. Will you explain how the port side of the "Strathalbyn" was carried around to starboard?

A. By reason of the impingement of the stem of the "Virginian" on the forecastle edge, which was unsupported to resist the direction of the blow.

Q. Mr. Erismann, did the damage to the "Strathalbyn" show any cut made by the colliding vessel?

A. The general direction of the vessel cutting into the "Strathalbyn" was generally shown.

Q. Was the damage to the "Strathalbyn" in the nature of a cut or a tear or a crumple?

A. The starboard side plates crumpled; the deck

tore and buckled—or buckled and tore, and the port plates bent.

Q. Mr. Eismann, could this damage have been caused to the "Strathalbyn" if the vessels had come together at any other angle except at an angle almost directly ahead?

MR. HAYDEN: I object to that on the ground that this witness is not qualified to testify.

A. Any other—any blow delivered at an angle very little different than the angle as about indicated by the damage would have caused denting of the plate surfaces and dealt a glancing blow.

CROSS EXAMINATION.

Q. (Mr. Hayden) Mr. Eismann, don't you imagine that these starboard plates on the forecastle head of the "Strathalbyn" would bend before they broke?

A. Depending altogether on the nature of the blow.

Q. I presume they bent before they broke, didn't they? A. Depending on the nature of the blow.

Q. I am asking you if they did not bend before they broke? A. That is almost impossible to answer.

Q. Is it?

A. The question was that they bent before they broke?

Q. Yes, the starboard plating carried away?

A. The starboard plating carried away?

Q. I mean this plating right in here, did that bend before it was broken off, right along that line marked "B"? A. Yes, this side bent.

Q. Taking this line "B" now on claimant's identification "5-6", would you say along that line that those plates had bent before they were broken, or not?

A. Along that line the port plates are bent.

Q. Did they bend before they broke, or did they break before they bent?

A. They show there that they are simply bent.

Q. Along the line that I have indicated, the line "B", are not those plates broken?

A. Yes; they are bent also, and they broke in certain places.

Q. Now, the places that they broke in, did they

break before they bent or were they bent before they broke, by this collision?

A. I can't answer that question.

Q. Did you take any measurements to determine what the angle was from this point marked "C" to the point marked "A" by you, taking the amidship line of the vessel as the base line?

A. I was not allowed to take any measurements.

Q. So you don't know what the angle was between the point marked "A" by you and the pointed marked "C"? A. The distance and angle are different.

Q. I say, taking the base line, taking the center of the ship as the base line—

A. (Interrupting) Yes.

Q. (Continuing) —what angle was it?

A. What angle was what?

Q. What angle did you get up in here at the point "C", if you draw a line one side of your angle from the point marked "A" to the point marked "C", taking the center of the ship, a line running from the bow of the ship to the stern of the ship? A. Take the angle?

Q. Yes. A. No sir.

Q. Do you know what it was? A. No sir.

Q. Isn't it a matter of fact that there would have been more tendency to have been a glancing blow if these vessels struck head-on than there would be if they struck nearer at right angles to each other?

A. Will you please ask that question again?

(Question read.)

A. It would have been a glancing blow—

Q. (Interrupting) You can answer that by "Yes" or "No" I think, Mr. Erisman.

A. Well, I would like to answer it the other way, if I may.

Q. If you will, answer it "Yes" or "No", one way or the other; then explain.

A. Well, just read the question again.

(Question read).

A. A more glancing blow head-on than at right angles, is that what you want me to answer?

Q. Yes.

A. More—they would have hit a glancing blow had they met head-on. Now, can I explain what I mean?

Q. Yes, certainly. A. At least on a more—

MR. LAWRENCE BOGLE: (Interrupting) Yes.

A. The angle of heel on the "Strathalbyn"—the list of the "Strathalbyn" prevented the contingency which you state.

Q. (Mr. Hayden) They could not have struck head-on then?

A. They hit head-on, but owing to the list of the "Strathalbyn" and the light nature of the forecastle plating—side plating, the stem of the "Virginian" impinged on the plating and broke it and bent it or bent and broke it, you see.

Q. Now, do you mean to say that the "Strathalbyn" was struck directly head-on by the "Virginian"?

A. At a small angle.

Q. What do you mean by a small angle?

A. Oh, an angle of two, three degrees.

Q. No more?

A. Not much more; might be a little more.

Q. How much more?

A. Well, with a limit, I should say, of eight degrees.

Q. Eight degrees? A. Eight degrees.

Q. Could not be any more than eight degrees, in your opinion? A. I don't believe so, no.

Q. Have you ever measured the bow of the "Virginian"? A. No sir.

Q. Do you know how much above the water line the bow of the "Virginian" was at the time of this accident? A. Yes sir.

Q. Personally know that? A. I made inquiries.

Q. Who told you?

A. I asked for the owners—from the owners of the "Virginian".

Q. Who did you ask? A. Mr. Roberts.

Q. What did he say?

A. I asked him for the draft of water, approximately, of the "Virginian" about that time.

Q. The draft? A. The draft forward.

Q. What did he tell you?

A. He told me from 17 feet to 18 feet.

Q. Did he tell you how high above the water the bow of the "Virginian" was? A. No sir.

Q. Did you estimate that?

A. I laid it out without measuring it.

Q. Do you mean to say that if the "Virginian" had struck the "Strathalbyn" at 30 degrees or 40 degrees, that she would not have gone through her bow from the port side over to the starboard side?

A. Through whose bow?

Q. Through the "Strathalbyn's" bow?

A. If she had hit her at an angle of 30 degrees?

Q. Yes. A. To her fore-and-aft center line?

Q. Yes.

A. That is a question of strength of materials. It would have dented the plate both sides.

Q. If he had struck her in the same position that this damage is shown, on those angles, do you mean to say it would not have cut through the "Strathalbyn's" plating?

A. If she hit on the same angles as are shown there, it would have produced the same damage as shown on the photograph.

Q. I am speaking about 30 or 40 degrees?

A. Your question is that had the "Virginian" struck the "Strathalbyn" at an angle of 30 degrees, would the damage have been as that damage is?

Q. Would she have cut through—

A. (Interrupting) Yes.

Q. (Continuing) —the port plates and carried over into the starboard side of her? A. No.

Q. She would not have done it?

A. She would not.

Q. Why not?

A. Because the plates were crumpled on the starboard side, but those plates were pushed by the stem of the "Virginian" at an angle very near their surface and burst the rivets and crumpled the plate as it went.

Q. At an angle very near the surface. What surface? A. The surface of the plating?

Q. And what is that determined by?

A. That is determined by the lines of the boat.

Q. Yes. At the place of the plating?

A. At the place of the plating, yes.

Q. Where the plating comes in contact with the stem?

A. The mean would have to be taken—no sir, the plating is laid—

Q. (Interrupting) Where the plating would come in contact with the stem of the "Virginian"?

A. Where the plating would come in contact with the—

Q. (Interrupting) That would cause the crumpling, wouldn't it?

A. The line of least resistance in plating, which is a warped surface, would give the direction—a mean between the top and the bottom of the broken area.

Q. Is it your idea that the stem of the "Virginian" followed along the frames of the "Strathalbyn" and cut the rivets in the plating? A. No sir.

Q. What is your idea about that?

A. That the stem impinged on the plating—

Q. (Interrupting) Where?

A. (Continuing) —and the rivets were burst. The stem impinged across the port corner of the stem and broke it, and it is the plates, as it was being crumpled and pushed aft, that burst the heads of the rivets off.

Q. So that the stem of the "Virginian" might have been a considerable distance away from the freework of the "Strathalbyn" and caused this damage?

A. No, it could not be a very great distance away.

Q. How far would you say?

A. It would have followed at a distance corresponding to the line of a plane passed vertically in the direction of the collision.

Q. You have got to use different terms, I can't understand you, I don't know what you mean. Please explain it in another way, will you?

A. The plane—the center line plane.

Q. What do you mean by that?

A. Of the "Virginian," the center line plane. I mean an imaginary surface—vertical surface, without thickness, which would project indefinitely in front of the "Virginian's" bow and the stern of her; simply the

surface which would separate the "Virginian" in two, the center line.

Q. That would not necessarily correspond with her actual center line from stem to stern, would it?

A. Absolutely, sir.

Q. Then you mean the center line of her from stem to stern, when you speak about the plane of her?

A. Yes.

Q. All right, now go ahead.

A. Now that plane, before the—

Q. (Interrupting) That is an ordinary line, isn't it? A. Yes.

Q. Just like the stem of her?

A. Yes. That line, projected before the collision, cut the canted edge caused by the list of the "Strathalbyn"—cut right through it; when the stem came on it broke the corner off and plowed right along, bending the frames or the beams and crumpling the plating. Can I make a sketch of this?

Q. Yes, I would like to have a sketch of it, I would like to get your ideas.

A. The "Strathalbyn" here; that is looking right straight at her (witness drawing); she had a list of I believe it was six degrees.

Q. This is the "Strathalbyn," marked "S" here?

A. Yes.

Q. Now, all right.

A. Now, the bow of the "Virginian" was vertical. This point is supposed to be there because this point is here, this being the "Virginian" and this the "Strathalbyn." (Indicating.) Now owing to the list—

MR. LAWRENCE BOGLE: (Interrupting) Mark the "Virginian" and "Strathalbyn."

A. (Witness drawing.) On this side and the stem of the "Virginian" was over here, and the course or the direction of this vessel was here (indicating) and the "Virginian" at comparatively a small angle or straight on, but the angle is small with this angle here. (Indicating.) Now, the point of contact was at this level here (indicating), taking the bows this way, of both boats, you see, the overhanging bow of the "Virginian," see—

MR. LAWRENCE BOGLE: Mark the point of contact.

A. It occurred at a point no higher than the top of the forecastle deck of the "Strathalbyn."

MR. LAWRENCE BOGLE: Mark that "Point of contact."

A. (Witness marks) Struck here. (Indicating.)

MR. LAWRENCE BOGLE: Mark that too.

A. (Witness marks "Point of contact.") This here is the line of the sheer strake of the "Strathalbyn" (indicating), and this is the forecastle plating here (indicating), which is lighter, being a superstructure. The stem here—plating coming along here on the "Strathalbyn," (indicating); the plating here is where the main top member of strength is located, and the stem overhanging.

MR. LAWRENCE BOGLE: Mark that point between which the main strength is located.

A. This is the sheer strake, main "sheer strake top strength member." The stem of the "Strathalbyn" being this way and the stem of the "Virginian" being there—

MR. LAWRENCE BOGLE: Mark it.

A. (Witness marking) This plating and the stem here. (Indicating.)

MR. LAWRENCE BOGLE: Mark that.

A. "Point of contact" of—well, I have got that marked up here.

MR. W. H. BOGLE: Well, you were saying "here."

A. "Point of contact," that is all right. Now, the first plating touched by the stem of the "Virginian" was the forecastle plating, which was lighter, and that bent; the leverage exerted on the stem, it being bent over the side, the bow of the "Virginian" impinged upon it and broke it in the vicinity of the water line and started right through here. (Indicating.) Now, the center line of the "Strathalbyn"—

Q. (Mr. Hayden) Mark the line she started through. This line marked with an—

A. (Interrupting) Arrow head.

Q. (Continuing) —an arrow head.

A. Is the general direction of the course of the "Virginian." As the boats made their impact, caused their center lines to diverge and the mean line of the surface of the plating was approximately here. (Indicating.)

Q. What do you mean by "mean line of the surface of the plating"?

A. She was broken here (indicating), and she was broken there (indicating). You see that there is considerable flare to the side of the vessel, and this mean line extended somewhere in about this vicinity (indicating).

Q. Half way between the top of the break and half way between the bottom of the break, is what you mean?

A. Yes.

Q. All right. A. And that along this surface—

MR. LAWRENCE BOGLE: What is that? Mark it.

A. That is "mean line of broken plates vertically" would be about the line of the center line plane of the "Virginian," produced; that by reason of being hit near the forecastle deck and the stem of the "Strathalbyn" being at an angle, the plates were in the worst condition to withstand a blow locally and that the plates gave way, crumpling along a line closely approximating the mean line of broken plates vertically.

Q. (Mr. Hayden) Where did the bow of the "Virginian" go?

A. It followed approximately the line of the plane, with such alterations as would be caused by the momentum.

Q. Mark it on that drawing that you have got, where the bow of the "Virginian" went, mark the line of the bow of the "Virginian" as it progressed.

A. Well, you won't be able to see anything through here.

Q. No, just draw a line showing the direction of the bow of the "Virginian" from the position it is in now until it stopped.

A. It is marked on this line here—

Q. Now just—

MR. LAWRENCE BOGLE: Let him answer.

Q. (Mr. Hayden) Do I understand that this is the line of the bow of the "Virginian"?

A. That is the plane that I was talking to you about.

Q. Is that where it actually went? Not the plane of it, not an imaginary line extended forward, but I want to know where the bow of the "Virginian" actually went after she struck the "Strathalbyn"?

A. No. I can show it approximately.

Q. Well, show it.

A. With this center line changed over in this direction, traveling in this direction.

MR. LAWRENCE BOGLE: Mark that.

A. (Witness marking) "Travel of 'Strathalbyn's' center line while in collision."

Q. (Mr. Lawrence Bogle) That is "Travel of S. center line—"

A. Yes, "Strathalbyn's" center line. The boat drew off then in this position and the bow of the "Virginian" naturally assumed a slight angle as it proceeded, and that angle followed somewhat to lie tangent to this line that is at a distance equal to the touching plates on the mean line at the height of this surface here on this boat (indicating), and the alteration would depend entirely on the distance of the surface — outer surface of the "Virginian" with the center line. I could not tell how much that was, but the tendency of the center line would be to shift over like that, and this one to come here (indicating), and—

Q. (Mr. Hayden, interrupting) Mark on this the center line of the "Virginian," so that we will have that.

A. (Witness marks) This is the mean center line, and this is the development of it as caused by the—

Q. (Interrupting) Now, we are getting back to the question I asked you before: If the bow of the "Virginian" did not follow the framework on the "Strathalbyn"—between the plating of the "Strathalbyn" and the framework of the "Strathalbyn"?

A. Between the plating and between the framework?

Q. If the bow of the "Virginian" did not follow the line between the plating and the framework of the "Strathalbyn"—did it or didn't it?

A. The plating and the framing face?

Q. Yes, the stem of the "Virginian", did it follow that line?

A. You are confusing the stem and the frames.

Q. I mean the stem of the "Virginian"? A. Yes.

Q. Did that follow the outside line of the plating of the "Strathalbyn" and following between the plating of the "Strathalbyn" and the frames of the "Strathalbyn"? A. No.

Q. The stem did not? A. No.

Q. The stem of the "Virginian" did not follow in between the plating of the "Strathalbyn" and the framework of the "Strathalbyn"? A. No.

Q. What happened to it, where did it go?

A. It broke these frames here (indicating), and then the rounding side touching up against here, touching up against the forward end of the wreckage so shifted the center lines of both vessels that the sides came tangent toward the after end of the damage.

Q. Did you look at the broken frames in the bow of the "Strathalbyn"? A. Yes.

Q. Can you tell, from those broken frames, where the stem of the "Virginian" struck them or pierced them as it was going through? A. No sir.

Q. Would the frames break at the point of contact with the stem of the "Virginian"?

A. They might and they might not, because in structures which are plated over you might get the blow to the frames or they might break as the result of the plating being torn or pushed away.

Q. How many feet would you say that the bow of the "Strathalbyn" would be deflected—to port it would be, wouldn't it?—to port, would that be the direction of the deflection of the bow of the "Strathalbyn"?

A. The deflection would have been to starboard on the "Strathalbyn".

Q. To starboard?

A. Yes. The blow was struck on the starboard side?

Q. Struck on the port side, I understand.

A. The port side and towards the starboard side.

Q. Yes. A. Yes.

Q. And then how would the head of the "Strathalbyn" have swung?

A. Swung—what do you mean, relatively to the water, or what?

Q. Relatively to the water, yes.

A. The blow struck on the stem and broke the stem, started the plating; then the side of the "Virginian", as the stem pushed its way through, came in contact with the plating of the "Strathalbyn" at the water line and worked the head of the "Strathalbyn" to port.

Q. To port?

A. Yes, worked the head, that is, turned the vessel a little to port.

Q. And then she would not have gone to starboard in the water? A. No.

Q. If she did go to the starboard in the water, then it must have been struck at a greater angle?

A. What is that?

Q. If the head of the "Strathalbyn" was shoved to starboard in the water, she must have been struck at a greater angle than you have mentioned?

A. If the bow of the "Stratahlbyn" had gone to starboard she would have what?

Q. She must have been struck at more of an angle than you have mentioned?

A. Yes, exactly. You see—

Q. Now—

A. (Continuing) —that—

Q. (Interrupting) If she had been struck at this last angle you put down here, she would have shoved her to starboard, would she? A. Yes.

MR. HAYDEN: All right. Just mark this, please—

MR. LAWRENCE BOGLE: Have you marked the one before it?

MR. HAYDEN: The line "A" is the line which this witness says would have shoved the bow of the "Strathalbyn" to starboard if she had been struck in that direction.

THE WITNESS: Yes sir.

MR. HAYDEN: I want to introduce this in evidence as libelant's exhibit "V-1."

THE WITNESS: Yes, that is all right.

Paper referred to was marked libelant's exhibit "V-1," same being attached hereto and returned herewith.

MR. HAYDEN: For the purpose of identifying the witness's testimony on cross examination, we will offer this, marked "V-2."

Paper referred to was marked libelant's exhibit "V-2" by the Notary, same being attached hereto and returned herewith.

Q. (Mr. Hayden) This little picture, that Mr. Bogle showed you, marked claimant's exhibit "5-6," and for which the larger picture marked claimant's exhibit "5-6" was substituted, is the picture that you said fairly represented the "Strathalbyn" at that time you took it? A. Saw it.

Q. At the time you saw it.

MR. HAYDEN: We will introduce it in evidence, as libelant's exhibit "V-3."

Picture referred to was marked libelant's exhibit "V-3" by the Notary, same being attached hereto and returned herewith.

Q. (Mr. Hayden) Referring now to claimant's exhibit "5-6" and the line marked "A," which as I understand you is the point at which the vessels came at rest—

A. (Interrupting) No sir, I didn't say that. It is the extent of the damage.

Q. Oh. You don't mean, then, that to indicate the point at which the bow of the "Virginian" ceased to move forward?

A. No, I can't tell that. It is the damage.

Q. At this limit of damage here, marked "A," how far, in a line drawn at right angles to the fore-and-aft center line of the "Strathalbyn," would be the stem of the "Virginian" away from the break in this damage or the point that you have got here marked "A"?

A. I have not measured the distance, but from seeing the "Strathalbyn" and understanding that the "Virginian's" side was unbroken, the distance of the center line of both boats at the end of the collision, as near as such things can be given, would be the sum of the distance between the rubbed surface of the plating at the

vicinity of the water line in the "Strathalbyn" and the distance between the rubbed surface of the plating on the "Virginian" and the center line at that point.

Q. Well, that is not very clear to me, but I am asking the plain simple question: How far would the stem of the "Virginian" be to starboard of the point "A" when it got up opposite that point?

A. I have not measured it.

Q. Well, it would be some distance away from it, though, wouldn't it. A. Certainly.

Q. What would you estimate the distance would be?

A. I could measure it, provided I had the lines of the two vessels, but I could not estimate it.

Q. The point "A," then, does not indicate where the bow of the "Virginian" stopped in the "Strathalbyn"?

A. No sir.

Q. The bow of the "Virginian" might have gone considerably beyond that point might it not?

A. No sir.

Q. Could it have gone a less distance than that point? A. Yes.

Q. What is your opinion whether it went a lesser distance than that point, or went a greater distance—that is, the stem of the "Virginian"?

A. The stem of the "Virginian" stopped this side of the break.

Q. Stopped this side of the break? A. Yes.

MR. LAWRENCE BOGLE: Which side do you mean?

Q. (Mr. Hayden) Towards the bow.

A. I mean it must have been between this point and the bow.

Q. Do you remember how this plating hung, whether it hung aft or forward of the break?

A. The plating hung over the water and hung on a vertical line corresponding to the last frame to which it was riveted.

Q. Yes, but was the outer edge of the plating forward or aft of the line of that beam—the line of the beam of the ship at the point where it connected with the ship?

A. It was slightly aft; its weight had swung, it was

elastic, there was nothing to fasten it or hold it and it might swing, might swing it an inch or two further forward or further aft.

Q. Well, wasn't it considerably further aft?

A. Well, it was not forward.

Q. Doesn't that photograph number "5-6" show it aft? A. Yes.

Q. Considerably aft? A. No.

Q. Let me see this other one, if you please. Does not this photograph "V-3" show it hanging considerably aft?

A. Shows it almost normal to the surface of the vessel at that point.

Q. How many times have you been in collision with steel ships of the size of the "Strathalbyn" and "Virginian"?

MR. LAWRENCE BOGLE: I object to that as immaterial.

A. Never been in a collision on a vessel of the same size as the "Virginian" and the "Strathalbyn," in a collision.

Q. How many collisions have you been in where the vessels came together head-on and one vessel had a list of six and a half degrees and the other was perpendicular.

MR. LAWRENCE BOGLE: I object to that as immaterial.

A. Never been in such a collision, under the circumstances.

Q. (Mr. Hayden) Have you ever gone to sea?

A. Yes sir—not for pay; I have gone as a passenger.

Q. As a seafaring man?

A. Yes sir, I have been to sea as an amateur or a passenger on a vessel.

Q. What kind of a vessel, yachts?

A. Yachts of various kinds and sizes.

Q. What is the biggest yacht you have ever been to sea on?

A. Oh, 60 feet, 70 feet.

Q. You never have been to sea in—never have had

anything to do with the navigation of a large vessel, though, have you?

A. No; that is, I have been in the pilot house of large and fast vessels when they were on their regular run.

Q. Yes, but you never had any training as a sailor?

A. No what?

Q. And you never had any training as a sailor either, did you—master?

A. No, no master, no examination; any more than a man picks up by being around the water all his life.

RE-DIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Mr. Eismann, if the "Virginian" had struck the "Strathalbyn" on the port side, at an angle of thirty to forty degrees, and the momentum had been sufficient to cut through to the starboard side of the "Strathalbyn," would there have been any crumpling of the plates on the starboard side of the "Strathalbyn"?

A. There would have been no crumpling on the starboard side.

Q. Could there have been any crumpling of the plates, in the manner you found the plates on the "Strathalbyn" crumpled, by any kind of a blow except one striking practically in the same direction, lengthwise of the plates?

MR. HAYDEN: I object to that as leading and suggestive. A. No.

Q. (Mr. W. H. Bogle) If the engines on the "Strathalbyn" had been reversed immediately preceding the collision, say within thirty to forty seconds, would it have had any effect upon the direction of the "Strathalbyn" at the moment of the collision?

MR. HAYDEN: I object to that on the ground that it is leading, and on the further ground that there is no testimony in the case to lay a foundation for such a question, and on the further ground that this witness is not qualified.

A. The answer is, no.

Q. (Mr. W. H. Bogle) What would be the effect upon the course or direction of the "Strathalbyn" from reversing her engines?

MR. HAYDEN: We object on the ground that the witness has not shown he is qualified.

A. In single-screw vessels, when the engine is reversed the stern goes to port.

Q. (Mr. W. H. Bogle) About how long would it take, in the case of a vessel such as the "Strathalbyn," and loaded as she was on this occasion, for the reversal of the engines to take effect in changing her course?

MR. HAYDEN: Same objection. The witness has not shown he is qualified.

A. Some considerable time.

Q. (Mr. W. H. Bogle) Can you express it any more definitely?

MR. HAYDEN: Same objection, on the ground that the witness is not qualified.

A. Ships vary on the time, depending on the power and depth of lading.

RE-CROSS EXAMINATION.

Q. (Mr. Hayden) What did you mean when you said that the superstructure of the "Strathalbyn" tumbled home?

A. I mean that the breadth of the vessel about the water line is greater than that at the height of the structure at any point above.

Q. You did not mean that the upper bridge, referring to this bridge marked "C" in claimant's exhibit "5-6," is any narrower than the bridge marked "D"?

A. It is.

Q. Do you know how much?

A. No sir. The general practice is to follow a fair line from the water—

Q. (Interrupting) I don't care about general practice, I am talking about this ship?

A. I didn't measure that ship.

Q. You don't know, then, if a line dropped down from the outer edge of the bridge marked "C," when the ship was on an even keel, would strike the outer edge of the bridge marked "D"? A. Yes, it would.

Q. It would strike it?

A. Yes, it would strike it, because by—

Q. (Interrupting) One is right above the other, do you mean to say?

A. They tumble in.

Q. Do you know that bridge "C" tumbles in from bridge "D"—that is what I am asking you? A. Yes.

Q. You swear that is the fact? A. Yes.

Q. All right. If you are mistaken on that fact, are you willing to think that you are mistaken in any other fact in this case that you have testified about?

MR. W. H. BOGLE: I object to it as incompetent, irrelevant and immaterial.

A. I would like to say something without the testimony, but—

MR. W. H. BOGLE: (Interrupting) No.

THE WITNESS: Can I say something, Judge?

MR. W. H. BOGLE: No, there is no use taking up time, Mr. Erismann.

THE WITNESS: I would like to say, I called up general practice in the building of ships.

MR. HAYDEN: Yes, that is all right. I move to strike it out as not responsive to the question.

(Witness excused.)

S. B. GIBBS, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary, to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. W. H. Bogle) State your name, age, residence and occupation.

A. S. B. Gibbs; residence, Seattle; marine surveyor.

Q. How long have you been following the occupation of a marine surveyor?

A. A little over ten years.

Q. In Seattle all that time? A. Seattle, yes.

Q. For what underwriter do you act as marine surveyor. A. San Francisco Board.

Q. Have you represented them during all the time mentioned?

A. I was not representing any underwriters in this case at all.

Q. No, but during the ten years?

A. Oh, yes. I thought you referred to the—

Q. (Interrupting) Do you, as a marine surveyor, examine injuries to vessels that have been damaged by collision or stranding, or otherwise? A. I do.

Q. And prepare the plans and specifications for repairs and superintend the repairs? A. Yes.

Q. Were you ever aboard the steamer "Strathalbyn"? A. I was.

Q. On how many occasions?

A. Oh, I think on three occasions.

Q. At whose instance?

A. I went up there first at the request of the time charterers of the "Strathalbyn," to see about the cargo and—

Q. (Interrupting) Was that after the collision?

A. That was after the collision. And once I went up at the request of Mr. Gardner, of San Francisco.

Q. Who is Mr. Gardner, who does he represent?

A. I think he was a surveyor on the "Virginian." He is surveyor to Lloyd's agent, I believe, in San Francisco.

Q. Was the "Strathalbyn" loaded at the time you were on board? A. She was—the first time.

Q. In the same condition, so far as her load was concerned, that she was in at the time of the collision?

A. Just the same.

Q. Did you notice the location of the lights on the "Strathalbyn"? A. Yes.

Q. Did you examine her sight lights?

A. I did not examine her side lights. I examined the location of the lights and the range of the lights after the stanchions were in place.

Q. I will get you to state whether those side lights were to any extent obscured by the deck load and stanchions holding the deck load on the "Strathalbyn" at the time you were aboard?

MR. HAYDEN: I object to that as leading.

A. I sighted along the stanchions and range of the lights and I judged there was a point directly ahead that the lights could not be seen, a little on each bow.

Q. Did you take sufficiently accurate measurements to be able to determine the distance on each side of the bow at which these lights would be obscured.

A. No, I did not take any measurement.

Q. At the time you were on board were you representing either of the parties to this litigation?

A. No, not at the time I looked at the lights—I looked at the range lights, I was not representing anybody.

Q. Did you examine the injuries to the "Strathalbyn"? A. I did.

Q. State in a general way of what they consisted.

A. The stem of the "Strathalbyn" was broken and twisted from port to starboard; the frames and plates on the starboard bow were torn adrift for a distance of about 30 feet and the plates were hanging out—standing out at nearly right angles to the ship.

Q. What was the condition of those plates?

A. Badly crumpled.

Q. Did you ever examine the "Virginian" after the collision. A. I did.

Q. Did you examine the injuries on her.

A. I did.

Q. Captain, can you state, from your examination of these two vessels and the injuries they sustained, the approximate course of the two vessels at the moment of collision?

A. I should say that they must have been end-on, or very nearly so.

Q. Did you notice whether the "Strathalbyn" had a list, or not?

A. I didn't take particular notice of the list. I was informed that she did have a list.

CROSS EXAMINATION.

Q. (Mr. Hayden) What lights, captain, did you look at?

A. I did not look at the side lights. I looked at the light-screens where the lights were.

Q. Were there any lights in the light-screens at the time you examined it? A. Not that I recollect of.

Q. How long was it before the vessel went to sea that you made this—

A. (Interrupting) When they were putting the deck load on, to the best of my recollection; I am not positive about that.

Q. Had they finished putting the deck load on?

A. I don't think they had quite. No, I know they had not.

MR. W. H. BOGLE: There was one other question I wanted to ask him, I forgot it.

MR. HAYDEN: All right.

BY MR. W. H. BOGLE:

Q. In your business, captain, do you survey vessels loaded with lumber? A. I do.

Q. How many vessels, on an average, loaded with lumber, do you survey during a year?

A. Steam and sail, about—I should say about seventy-five a year, or a hundred.

Q. Did you notice whether the stanchions on the "Strathalbyn" were standing straight or leaning, tumbled in or tumbled outward?

A. As I recollect it now, they were standing straight.

Q. What is usually the effect upon the stanchions of loading lumber of the quantity that was loaded on the upper deck of the "Strathalbyn"?

A. The effect on the stanchions?

Q. Yes.

A. The tendency is to spread out a little, particularly if they have a list; if the vessel has a list, the cargo is very apt to sag a little.

Q. Is there any way by which that can be absolutely prevented? A. Not on a steamer.

BY MR. HAYDEN (resuming):

Q. Isn't it a rule, captain, or do you remember on this vessel whether or not the stanchions tumbled home to some extent?

A. I don't recollect the fact they tumbled home, Mr. Hayden, as I was looking at them.

Q. If the stanchions did tumble home, it would have a tendency to keep the cargo more from spreading out, wouldn't it? A. Yes.

Q. Where did you stand when you say you sighted along these stanchions?

A. I stood on the bridge there, sighted in the way of the lights, and then I went on the forecastle and

sighted from the forecastle head aft and sighted aft along the stanchions.

Q. From the aft end of the forecastle?

A. From the aft end of the forecastle.

Q. How much cargo was aboard then, up to the forecastle head?

A. I don't recollect just how much cargo there was aboard at that time.

Q. Did you stand on the forecastle or did you stand on the cargo?

A. My impression is that I stood on the forecastle and sighted the stanchions. I am not quite sure of that point.

Q. Could you see the light-screen inside of the stanchions?

A. As I sighted on the outside of the stanchions, I figured that the light was obscured from the line of the stanchions.

Q. Do you remember if you could see the light-screen on the inside of the stanchions?

A. I don't recollect that.

Q. Do you recollect looking to see if you could?

A. No, I don't know as I looked on the inside. I was sighting on the outside.

Q. Did you see the light-screen at all on the outside of the stanchions, any part of it?

A. Yes, I could see a portion of the screen.

Q. A portion of the screen on this deck marked "D" on claimant's exhibit "5-6"? (Showing.)

A. The screen is out here. (Indicating.)

Q. Yes.

A. I could see the outside portion of that box.

Q. Looking from the forecastle head. A. Yes.

Q. Do you know how much of it you could see?

A. No, I don't recollect now.

Q. How far apart were those stanchions, captain?

A. Oh, I should think they were about 16 feet apart, to the best of my recollection.

Q. Did you, in walking down the deck, notice at intervals, as you passed along towards the bridge, you could see the light-screen in between those stanchions?

A. No, I didn't look at that. I was sighting from

the point ahead and I was asked to see if I thought there was a point ahead where the light would be obscured; that is all I was asked to do.

Q. Who asked you to do that?

A. Mr. Gardner asked me to do that.

Q. Where was Mr. Gardner?

A. He was walking around the ship at the time.

Q. What was he doing here at that time?

A. I think he was having something to do with the "Virginian," if I recollect right.

Q. Prior to this accident?

A. No, I think it was after the accident; I think he was up here on some other case. I am not quite positive about that now.

Q. Well, was it Mr. Gardner who asked you to look at these stanchions on the "Strathalbyn"?

A. Yes.

Q. Prior to this accident?

A. No, it was after the accident he asked me, but I say you asked me what he was up here for; I don't know whether he was up here on purpose, on this case, or on some other case.

Q. Yes. But it was after the accident that Mr. Gardner asked you to look at the stanchions and the light? A. Yes.

Q. Well, when did you look at them, before or after the accident?

A. I looked at them after the accident.

Q. Oh. And you could see, after the accident, from the forecastle head, a portion of the light-screen?

A. A portion of the light-box.

Q. A portion of the light-box. Do you know the distance from that light-screen to the forecastle head where you were standing?

A. No, I don't, I didn't measure it. I didn't take any measurements at all.

Q. Were you standing right on the break of the forecastle head?

A. To the best of my recollection I was, yes.

Q. Was Mr. Gardner there at the same time?

A. He was.

Q. Did he look to see the lights too?

A. I think he did.

Q. If you could see the light-screens from the fore-castle head, there would not be a very great space directly ahead of those screens that would not be visible, that is, the light would not be visible, would there?

A. As I recollect, the box projects a number of inches outside of the light.

Q. The light was not in the box at the time?

A. No.

Q. Did you ever see the light in the box? A. No.

Q. And you can't tell now how many inches of the box you could see?

A. No, not exactly. I saw enough of it to show or to make me feel as if the light was obscured from a certain point ahead.

Q. The light would be naturally obscured from a certain point ahead, with a stanchion sticking up above it, wouldn't it?

A. Above it and at the side.

Q. Yes, anything outside of the—

A. (Interrupting) Light.

Q. (Continuing) —outside of the block in the forward end of the screen? A. Yes.

Q. So it might obscure seeing the light directly across the bow of the vessel, having the stanchions up there, but would not necessarily obscure seeing the light directly along the side of the vessel on a line parallel with the fore-and-aft line in the center of the ship. (Drawing.)

A. Now, you mean if looking from that point right along there, that the light would not be obscured?

Q. Yes.

A. I think a portion of it would be obscured, a portion of that light would be obscured on a straight line parallel to those stanchions—a portion of that light, as soon as you drew in here. (Indicating.)

Q. And you think a portion of it would be visible?

A. Might be a portion of it visible from the outside of the stanchion on a straight line; it is possible there might be a portion of the light visible on a straight line.

Q. That would be a line that would be parallel with the fore-and-aft line drawn from the stem to the stern?

A. Yes. I say it is possible that a portion of the light—the whole of it could not be seen.

Q. If a portion of the light were seen under those circumstances, the light would be visible then ahead, would it not?

A. It might not be visible a great ways ahead, no. You mean right ahead?

Q. I mean right ahead on this line on the outside of the stanchions.

A. Yes, it is possible it might be seen a short distance; it would not be seen as far as it would be if the whole light was visible. No accurate way of determining just exactly.

Q. No accurate way, you say, of determining that?

A. Exactly, without measurement.

Q. A few degrees swinging of the head of the ship away from that line of light, however, would show up the light very clearly, wouldn't it?

A. Well, it will depend on the distance the vessel was off. It would take quite a number of degrees, if a vessel is a mile away, before you could swing it so that you could see the light.

Q. I don't quite understand that, captain, why it would make any difference in the distance.

A. If only a portion of the light is visible here, you would not see the whole light, you would have to draw the line out this way (indicating), and that would increase—as the distance between this vessel and the other vessel increased that would increase the angle upon which the light would be visible.

Q. But the angle would not have been increased any, captain, the angle would be exactly the same, whether you were ten feet ahead or two feet ahead or a thousand feet ahead.

A. It would before you saw the whole light. My conclusion there was that there was a point ahead of the vessel that the light—it was impossible to see the lights.

Q. But your conclusion was not that there was a point directly ahead of the vessel, on a line parallel with the side of the vessel, that you could not see the lights?

A. No, my conclusion at that time was that the point—that the point ahead increased as the distance

between the two vessels increased, upon which you could not see the light, that is, the radius got over a bigger surface in which the light was invisible.

Q. Did you survey this cargo for anybody?

A. I was asked at first to survey it for the American Trading Company, but afterwards it was found it was not necessary, so I did not take any further action in the matter.

Q. Was it when you were over there to survey the cargo for the American Trading Company that you looked along these—

A. (Interrupting) No, it was afterwards.

Q. It was after the collision?

A. When I went over with Mr. Gardner, after they had commenced to load the ship.

Q. After they had commenced to load the ship?

A. After they had commenced to load the ship, that I sighted along the stanchions.

Q. Oh, was that the second time, after she had been damaged and put the cargo on board of her again?

A. Yes.

Q. And it was not the first time?

A. It was not the first time. It was the second time—at the time I saw you there.

Q. Oh, yes.

A. I didn't pay attention to the light and the stanchion when I first went up there.

Q. Did you ever see the stanchions on this ship prior to the accident?

A. Yes, I saw the vessel after the accident, in Tacoma.

Q. I say prior to the accident did you see the stanchions—

A. (Interrupting) Oh, prior to the accident.

Q. Did you ever see her loaded, with the stanchions, prior to the accident? A. No.

Q. You never saw her at all prior to the accident?

A. Not prior to the accident, no sir. I have noticed a good many of them since.

Q. Did you see anything unusual with the arrangement of the stanchions when you were looking at them?

A. Oh, they were arranged about the same as they usually are on that class of steamers.

Q. Captain, did you testify about the angle at which you thought these vessels came together?

A. I said I thought they must have met nearly end-on.

Q. What do you mean by that?

A. Why, bow-and-bow, directly end-on.

Q. That is, judging from what you saw that was damaged?

A. Judging from what I saw of the damage.

Q. That is somewhat speculative, isn't it?

A. Well, I would not say so. I don't see how the damage could have occurred in any other way. I don't see how it is possible for any—for the damage to have occurred in any other way, because I know the question came up as to how this portion of the stem could remain uninjured and the rest of the stem gone on, tore this way, and when they told me the vessel had a list, why, then I accounted for it. The vessels must have been practically end-on.

Q. If the vessels struck practically end-on, your idea is at the line of cleavage the stem of the "Strathalbyn" was cut by the progressing bow of the "Virginian"; is that it?

A. That would not necessarily follow. The two vessels might have come in contact both at the same speed and the results have been the same.

Q. No, but I say the stem of the "Strathalbyn", by reason of having the list, would be cut by the bow of the "Virginian"?

A. That is it, that is it; they came together that way. (Illustrating.)

Q. If they came together that way, captain, why would not the "Virginian" have gone right straight amidships, right straight into her?

A. Well, it is possible there was a slight angle when they struck; it does not follow that the vessel should go right square into her because they came together nearly end-on.

Q. Well, if she started to break into the "Strath-

albyn" on the port side, why wouldn't she continue through on the port side, if they came on head-on?

A. Because she struck so nearly end-on there, she simply struck the upper portion of the "Strathalbyn" and plowed right along her.

Q. But that would be an indication that she struck side-on if she plowed across her.

A. It is impossible for her to have struck side-on and made that sort of a break in the vessel, that sort of damage; it would not have struck side-on.

Q. I don't mean side-on, I mean that her bow struck the—

A. (Interrupting) If she struck any other angle than nearly right end-on, she would have taken this here too. (Indicating.)

MR. W. H. BOGLE: Mark that, please.

A. The lower portion of the stem.

MR. W. H. BOGLE: Mark it "E."

A. She would have taken this or she would have cut into her on the port side.

(Portion referred to above was marked "E" on claimant's exhibit "5-6".)

Q. (Mr. Hayden) Do you know how far back from the stem she struck? A. How far back from this stem?

Q. Yes.

A. She must have struck very little on the port side of this stem.

Q. Do you know how far? A. No, I would not say.

Q. On the port side?

A. It could not have been a great ways, with a six and a half degree list, she could not have struck a great ways aft of the port side of this stem.

Q. But you don't know how far?

A. No, I don't know how far, but it would be a very short distance.

Q. What was the line of the cutting or breaking of the beams of the ship?

A. I would not—I am not positive on that point, as to just where the line was—of the beams of the ship. I don't know as I exactly understand you there about the beams.

Q. These. (Indicating.)

A. Yes, but I mean what was that—ask that question again?

Q. I was going to say, what was the line of the breaking of the beams as compared with the fore-and-aft line amidships, what would be the angle that you would project that line on to get it?

A. I didn't take particular notice of the angle of the broken beams. I remember that was broken. I am not prepared to say just where that point was.

Q. When you saw the "Strathalbyn", was this broken plating on her? A. Yes.

Q. Still hanging on her, was it?

A. Still hanging on her.

Q. And that was hanging aft—the direction of it was aft?

A. To the best of my recollection now, it stood out about right angles to the ship.

REDIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Captain, you say that you were requested by the American Trading Company to survey this cargo on the "Strathalbyn"?

A. Not exactly that. They were requested to consult with me, from the head office in San Francisco, and Captain Genereaux went up there first and made some suggestions as to what to do with the ship, and then I went up shortly after and—

Q. (Interrupting) Was that after or before the collision?

A. That was after the collision. Nothing whatever to do with it before the collision.

Q. Do you know who surveyed the cargo before the collision, or if it was surveyed?

A. I don't think she had any survey. I am quite sure they have no surveyor.

Q. At the time you sighted along the stanchions to determine whether the light was obscured in front, how much of the cargo had been replaced on the vessel?

A. To the best of my recollection the lumber then was a little above the forecastle head—as I recollect it; I am not quite positive on that point. I know the stanchions were in place and there was considerable of the cargo still to go on.

Q. I understand you to say that the opinion you formed from your examination at that time was that the outside of the stanchion was a little outside of the light? A. It was.

Q. So that the angle of the light ray would be off from the ship? A. It was.

Q. You said in your cross examination, that you had examined a number of others since. Just what did you mean by that?

A. Why, I have given—since this accident we have paid very careful attention to the location of the lights and the range of the lights, to see if they were obscured by the stanchions of the deck load.

Q. Have you had occasion to do that with the "Strathalbyn", or has she been back here since the accident?

A. She has not been back here since the accident.

Q. Have you made any examination of any sister ship of the "Strathalbyn"?

MR. HAYDEN: I object to that as immaterial.

A. I think we did on one ship. I don't recollect her name—that is, one of the sister ships—one of the "Strath" boats.

Q. Was that ship built in all respects as the "Strathalbyn"?

A. Well, that—I did not look that up to see whether she was built just the same.

Q. What was the result of your examination of that vessel?

A. Why, I felt as though the same conditions existed there as they did here.

Q. That is, that the light would be obscured?

MR. HAYDEN: I object as leading.

A. At a certain point ahead.

Q. (Mr. W. H. Bogle) Captain, you stated that these stanchions were placed as usual in loading lumber on that class of vessels? A. Yes.

Q. Where is it usual to place the light when vessels of that kind are loaded with a heavy deck cargo of lumber?

MR. HAYDEN: Objected to as immaterial.

A. Put it higher up.

Q. (Mr. W. H. Bogle) Is it customary or usual to use the light—the lower light?

MR. HAYDEN: Same objection.

A. In several cases they put the light higher up, and in a number of others the stanchions have been cut off.

Q. The light on this vessel was on the lower house, was it? A. Yes.

Q. You stated, captain, at the time you saw these stanchions when they were loading, the cargo was about up to the forecastle head?

A. To the best of my recollection it was, yes.

Q. Do you know—

Q. (Mr. Hayden, interrupting) You say above the forecastle head?

A. Yes, above the forecastle head; that is as near as I can recollect.

Q. (Mr. W. H. Bogle) Do you know how much higher the lumber would be loaded when she took on her full cargo as she had at the time of the collision?

A. I understood she had about 15 feet of a deck load.

MR. HAYDEN: I move to strike that out. He don't know anything about it.

THE WITNESS: I made some inquiries.

Q. (Mr. W. H. Bogle) How much would that be above the load she had on at the time you saw her?

A. Oh, I should think about five feet higher.

Q. What would be the effect of placing the lumber deck cargo five feet higher up, on the stanchions?

A. Well, there is a tendency to spread out a little at the top—a high deck load.

RECROSS EXAMINATION.

Q. (Mr. Hayden) That tendency is not in the loading of the vessel, is it, that tendency is when you get her to sea and she commences to roll around, isn't it?

A. Well, of course it is more noticeable then, when she gets to rolling around.

Q. And they put chains and wires across the stanchions to hold them in together, don't they? A. Yes.

Q. They draw them in as tight as they can when they start out, don't they?

A. They are supposed to, but vessels that don't load under survey, I don't know whether they do that or not.

REDIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Does that prevent the tumbling out on steamers?

A. If they are set up properly it does help in port, but as soon as they get to sea, why, they start out again.
(Witness excused.)

JAMES FOWLER, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) What is your business, Mr. Fowler? A. I am a marine surveyor.

Q. How long have you been engaged in that business? A. Well, about twelve years.

Q. And what position do you occupy at the present time, captain?

A. I am a ship and marine surveyor for Lloyds Register of Shipping.

Q. Captain, did you make an examination and survey of the steamship "Strathalbyn" after her collision with the steamship "Virginian"? A. I did.

Q. When did you make that?

A. The following morning about half past nine o'clock, at Tacoma.

Q. Where was the "Strathalbyn" lying at that time?

A. She was then laying at a buoy in Tacoma Harbor.

Q. Had any of her deck cargo been removed at that time? A. No.

Q. Did you make a careful examination of the nature of the damage, captain?

A. As much as could be seen at the time.

Q. Did you make any examination of the deck cargo and the stanchions?

A. Well, I saw them. I made no special examination of them, but I just saw them there and took a con-

siderable pains to examine things generally throughout the ship.

Q. Did you examine the lights—the location of the lights?

A. Well, I had occasion to go—when I landed on board of her I went in through the damaged bow and went up on top of the cargo, on the forward deck and from there I went on the bridge deck, over the screen of the light on the lower bridge, on the port side.

Q. On the port side? A. Yes.

Q. Did you take any particular note of the port light—the location of it as it was located in the light-screen on the lower bridge?

A. Well, I stepped over a lantern that was there. I didn't see any lamp, but I stepped over a lantern which was in the box.

Q. There was no light in the box at that time?

A. Not at that time.

Q. Captain, from your investigation and examination of this vessel, her deck load and location of lights and stanchions, what was your opinion as to the visibility of these lights directly ahead or nearly so?

A. Well, I examined the port side one, the starboard side being very nearly down in the water. She was then in a sinky condition and—well, preparations was being made to get her put on the mud flats close to. I cast my eye along from this lower light—along the stanchions, and I could see, plainly, that the light could not be visible forward. At that time the vessel had a heavy, heavy list astarboard, in fact the starboard —cargo on the starboard side was in the water and all the weight of the deck cargo was on the starboard stanchions; and I set myself looking along from the lamp—I didn't look from the forecastle head aft, but I looked from the lamp, where the lamp was placed, and I satisfied myself it would be impossible to see any light ahead.

Q. At that time you say that the weight of the deck cargo was off of the port stanchions? A. Yes.

Q. So that that—

A. (Interrupting) Absolutely all resting upon the starboard side.

Q. And even in that position you were satisfied

that the port stanchions obscured that light? A. Yes.

Q. So that it could not be seen—

A. (Interrupting) Yes.

Q. (Continuing) —from ahead. Captain, could you tell, from observing that light and sighting along the stanchions, about what degree the line of the light would be off to the port?

A. No sir, I could not say that with any accuracy.

Q. Have you any idea about how many degrees it would be—points or degrees?

A. Oh, possibly two degrees, somewhere thereabouts, and it might be more; but it would be that, anyway.

Q. At the time that you saw it? A. Yes.

Q. Then there would be some point or some distance ahead at which this port light would not be visible?

MR. HAYDEN: I object to that as leading.

A. Yes, sir there would be a spot that it would not be seen, would not be visible ahead.

Q. You testified that you made an examination of the damage to the "Strathalbyn". Did you make any subsequent examination of her damage?

A. If I may say it, my first duty was the safety of the ship. I was called there by Lloyds' agent and the vessel at that time was in a sinking condition. I agreed with the captain that the best thing to do, for the safety of the ship and cargo, was to cast off from the buoy, get tow-boats and push her. There was no room to tow her, but to push her broadside onto the mud flats, which were not very far away. At this time No. 1 hold had been full of water immediately after the collision, but sometime early in the morning, about eight o'clock, I believe, they found the water leaking into No. 2 hold. This was the condition of things when I went aboard of the vessel. After we had the vessel in safety and the tide began to recede, I then examined the damage, as far as was possible at that time.

Q. What was the nature of the damage to the "Strathalbyn", captain?

A. The stem was cut, apparently, as far as I could see as the tide went down, away about—what I take would be about the water line, possibly, when she was

loaded, about 23 feet back and fore, thereabouts, about 23 feet; the stem was cut and the upper works on the port side between the hawse-pipe and the stem was cut away, and the whole of the starboard bow crushed and crumpled up, laying in a mass, hanging on the ship's side about two frame spaces abaft the collision bulkhead.

Q. Captain, did you examine or survey the steamship "Virginian" after this accident? A. Yes sir. I did.

Q. What was the nature of the damage to her?

A. She had the starboard plates from the top to the oil tank—the lower compartment of the peak—from there upwards the plating was all ripped and torn. Several plates on the port side were dented.

Q. Captain, it appears in the testimony—

A. (Interrupting) In addition—I beg your pardon—

Q. Yes.

A. In addition to that, the stem bar was slightly bent.

Q. It appears from the testimony that at the time the steamship "Strathalbyn" left the port of Tacoma prior to the collision, she had a list to the starboard of about six degrees; that she had this list just prior to the collision with the steamer "Virginian". With this fact in your knowledge, captain, could you tell, from the nature of the damage to both vessels, the angle of contact of the two vessels at the point of collision, approximately?

A. Well, they were very nearly head-on, the "Virginian" slightly to starboard. From the nature of the damage, you could see that the two stems crossed each other; the "Virginian", being a stronger and heavier vessel than the "Strathalbyn", crushed through and cut the stem of the "Strathalbyn", but the fore-foots of both vessels slid past each other on the starboard sides, which guided the position or the direction—I should rather say the direction of the impact from the "Virginian" into the "Strathalbyn", preventing her going more central; with the fore-foots crossing each other made a guide for the ships to—in the direction of the impact.

Q. Captain, from the nature of the damage to the

two vessels, the fact that the "Strathalbyn" had a list of six degrees to starboard and the "Virginian" was on an even keel, could this collision have occurred at any other angle except head-on, or nearly so, and have caused this damage?

A. Well, it will be a difficult thing to say. Had they struck stem-on, the heavier vessel of course would have crushed right into the other one—the lighter vessel, but the way that they apparently locked horns, I might say, with each other, the one stem crossed the other and the lower half of the stem of the "Virginian" was on the starboard side of the "Strathalbyn", and the upper part was on the port side.

CROSS EXAMINATION.

Q. (Mr. Hayden) You do not imagine that the "Virginian" at the time of this contact was moving backward in the water, do you?

A. Well, I could not tell you. There was an impact some way from either of the bodies.

Q. Captain, where did you stand when you say you looked along the line of the stanchions for the purpose of determining where the light would be—how it would show forward?

A. I was standing right on the box where the lamp was, right behind the lamp; the lamp was down at my feet with the box in front of me with the screen in front of that. The stanchions were all in line.

Q. Yes. What was between you and the box?

A. Nothing between me and the box; the box was at my feet.

Q. What was between you and the light-screen?

A. Nothing between me and the light-screen. I was standing right on the light-screen, the box and the lamp at my feet, on the lower bridge—port side of the lower bridge.

Q. You were standing on the box-screen?

A. Well, right there; it was at the end of the bridge—part of the bridge.

Q. That was hung on a gate, wasn't it—

A. (Interrupting) No.

Q. (Continuing) —that went through the bridge?

A. Right on the port end of the bridge; not the

upper bridge; the lower bridge, which is in line with the bridge deck.

Q. I say that light-screen was hung on a gate?

A. That is on the end of the bridge.

Q. The light-screen stands somewhat above the deck?

A. No, it was standing level with that deck. I don't know whether I can see it here, or not.

Q. I think possibly you can see it here. (Referring to claimant's exhibit "5-6".)

A. Right in there. (Indicating.) This is the level of the deck here. (Indicating.)

Q. That is the level of the deck?

A. And it is right in there (indicating).

Q. There is the box, here. (Indicating.)

A. No, the box is way down there. (Indicating.)

Q. Well, will you please mark where you think the box was?

A. The box is right in here (indicating), it is right on here, as far as—it ought to be shown there. There is the deck (indicating) and there it comes right along there.

Q. I think that is the box right there. (Indicating.)

A. That is one up there. This is also one here. It is built right on the level of the deck here. (Indicating.)

Q. Don't mark it, captain, so that it shows that way, just leave it that way.

A. Yes. Well, that is it there, that is the box there. (Indicating.)

Q. As a matter of fact, it is a little above the bridge, isn't it—a little above the deck?

A. Well, it is so little, if it is anything it is only an inch or two, because I had to step—when I was going off the cargo, the cargo was up the level of here (indicating) and so everybody walked around there (indicating, then they had to go over here (indicating), and I stepped on there, right onto the box and on the deck, and I noticed there was a lantern—I could not say there was any light in it or anything, but there was a lantern there.

Q. Did you notice, captain, whether or not these stanchions tumbled inboard any?

A. I didn't observe how they were. I just merely looked along the line that they were standing at that time, and no cargo had been taken off the ship, nothing had been done at that time. The leashings and everything was all there.

Q. And you think that there might have been two degrees that the stanchions would be outside of the—

A. (Interrupting) Well, it might have been that, more or less.

Q. Outside of the center of the light, do you mean?

A. Yes, or it would be deflected off two degrees at least anyway outside of the ship.

Q. Outside of the center of the ship?

A. Well, I was taking the angle of the screen, I was taking the screen. I didn't know how far the light went out. The screen for the light there was obscured entirely by the stanchions.

Q. You mean the forward end of the screen?

A. Yes.

Q. The block, the four and a half inches of that block in the forward end of the screen? A. Yes.

Q. That was obscured. Then when you speak about the two degrees you mean that that was what was obscured the two degrees?

A. That was obscured there, yes.

Q. You never looked from the forecastle head aft to see whether or not you could see the lights, did you?

A. No sir, I did not.

Q. Nor you didn't look from any part of the deck load back along the stanchions to see if you could see the lights A. No.

Q. I may have misunderstood you, captain, but as I have got it down here you say that the "Virginian" hit the "Strathalbyn" slightly to starboard. Did you mean that, or slightly to port?

A. No, what I meant by that was that the line of the "Virginian" and the line of the "Strathalbyn"—the "Virginian" slightly on the starboard side here.

Q. That the "Virginian" struck the "Strathalbyn" slightly on the starboard side?

A. Slightly—the least little thing too—to the starboard side—on the port side, rather; but that is hard to describe, because it struck both on the port side above and the starboard side below, so that they were just the least little thing possibly here to starboard side when she struck, but when they crossed each other—I could describe it to you this way (illustrating).

MR. LAWRENCE BOGLE: You can't get that in the record.

Q. (Mr. Hayden) You can't get that in the record.

A. No, but this is what I mean. (Illustrating.)

MR. LAWRENCE BOGLE: Well, it won't do any good unless we get it in the record.

A. They crossed each other this way. (Illustrating.) So that they were very nearly stem-on; that is what I believe; that the "Virginian," coming down a little on the starboard side, sufficient to give her the start, then when the two fore-foots locked together, that guided the direction of the fracture—the tearing up of the "Strathalbyn"; she went right along, but the two fore-foots being together prevented the "Virginian" from going straight into her.

Q. Would that have a tendency to throw the head of the "Virginian" over to starboard?

A. Starboard side of the "Strathalbyn"?

Q. No, to her starboard, would it make a tendency to have the "Virginian's" head swing to starboard?

A. No, it would be the other way, to put it over to port. You can easily see what the effect would be when the two ships come together on the starboard—ends of the stem come past each other that way, starboard to starboard; but the list that the "Strathalbyn" had made the stem of the "Virginian" cut through about the water-line and carried away on the port side the upper works of the "Strathalbyn". The two fore-foots being then past each other, guided the direction of the impact from the "Virginian" through the "Strathalbyn"; otherwise, it would have possibly gone more central, into the center of the vessel.

Q. Did you know where the waterline was on the "Virginian" on the night of this accident?

A. No, I didn't.

Q. Did you see the "Virginian" afterwards on dry-dock? A. No, I did not.

Q. You have mentioned having seen her being damaged somewhere—the "Virginian" being damaged?

A. Oh, the "Virginian". Yes, I had to do with the repairing of her—the "Virginian"—oh, yes.

Q. You say her stem was bent which way?

A. Bent in.

Q. In? A. Yes.

Q. You mean right aft? A. Yes, bent aft.

Q. Right aft? A. Yes.

Q. Was it bent to port or starboard?

A. No, straight in.

Q. Straight in? A. Yes.

Q. There were some plates cut on the "Virginian", weren't there? A. Yes.

Q. Do you know where those plates were?

A. Starboard side—principally on the starboard side.

Q. What was the line of that cutting?

A. The line of one of the decks of the "Strath-albyn", that is the principal damage.

Q. How much above the waterline was that?

A. The "Virginian's"?

Q. Yes. A. About two feet.

Q. About two feet above the waterline? A. Yes.

Q. How big a cut was it?

A. It would be about 20 feet long, jagged edges, open from one inch to three inches—one inch to six inches.

Q. And 20 feet long? A. Yes.

Q. Did it break any of her beams?

A. No, no beams broken; the frames was bent.

Q. Some of the frames bent? A. Bent, yes.

Q. Along on the line of this cut?

A. Yes, principally along on the line of that cut.

Q. And that cut was how far above her waterline at the time she was there?

A. Approximately about two feet, as far as I remember, somewhere thereabouts.

Q. Do you know what draft it was—what would be the draftline of it? A. The "Virginian"?

Q. Where this cut came?

A. I could not tell you without reference to my notes, which I do not have here.

Q. Do you know what deck cut that?

A. Well, I guess I could tell you what deck had cut her. I should think it would be this main deck. (Witness referring to claimant's exhibit "5-6".)

Q. Mark it.

A. I should think it would be the deck somewhere thereabouts. (Indicating.) Of course it may have been this other deck. It was either one or the other. It might have been this deck. (Indicating.) I don't know which. But it was in line of a deck, because nothing else could have stood the resistance to cut the plates there. I could not swear, without measuring, whether it would be either that deck or this deck. (Indicating.) It was either one or the other.

Q. Either "F" or "G"? A. Either "F" or "G".

MR. HAYDEN: Those figures appear on this exhibit "5-6".

Q. (Mr. Hayden.) The "Virginian" is pretty sharp bowed, isn't she?

A. Yes, she is pretty sharp down there in that part of her.

Q. What is the width of her, say 30 feet back from the stem?

A. I could not tell you. I could draw them out to a scale. It would be only guesswork.

(Witness excused.)

(Filed Feb. 28, 1913.)

THOMAS JOSEPH DUFFY, a witness produced in behalf of the Claimant and Respondent herein, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

DIRECT EXAMINATION.

BY MR. BOGLE:

Q. What is your full name?

A. Thomas Joseph Duffy.

Q. What is your business?

A. Master mariner and pilot.

Q. How long have you been a master?

A. Since 1890.

Q. Do you hold a pilot's license also? A. Yes, sir.

Q. For what waters?

A. Puget Sound and its tributaries.

Q. How long have you held that? A. Since 1890.

Q. Captain, how long have you been engaged in the sea faring business? A. About twenty-eight years.

Q. And you have been a master since 1890?

A. Yes, sir.

Q. For how much of that time have you been engaged in business as a mariner—master mariner, on Puget Sound and its tributaries?

A. Well, I have been off and on for the same time, since 1890, all the time, only for three years when I was in Alaska.

Q. At the present time you are pilot for the American Hawaiian Steamship company? A. Yes, sir.

Q. How old are you?

A. I will be forty-five in April.

Q. You were pilot aboard the Steamship Virginian at the time she was in collision with the Steamship Strathalbyn? A. Yes, sir.

Q. What voyage was she on at that time?

A. What voyage was she on?

Q. Yes. A. I do not know the number of voyages.

Q. Between what ports, I mean.

A. Oh, between Seattle and Tacoma.

Q. What time did she leave Seattle?

A. 6:40 when she got away from Seattle.

Q. How was she loaded at that time?

A. She had about 2000 ton.

Q. What is her capacity, Captain, when fully loaded? A. She can hold 12,000 ton.

Q. So at the time she was leaving Seattle she was light? A. Compared with what she would be if loaded.

Q. She was bound to Tacoma for the purpose of completing her loading? A. Yes, sir

Q. Who is the master of the Steamship Virginian?

A. Captain Green.

Q. He was on this voyage that you were in charge as pilot? A. Yes.

Q. Captain, do you remember what time you passed Alki point on this night? A. 7:12.

Q. About how far off did you pass Alki point?

A. Pretty nearly a mile off.

Q. What was your course from Alki to Pulley point? A. Southeast by south, quarter south.

Q. Did you steer the same course from Alki to Robinson, or did you change it at Pulley?

A. Changed at Pulley.

Q. What change in your course did you make at Pulley on this night of January 12th?

A. I hauled her about to about a quarter of a point.

Q. Where did you make that change?

A. About three or four minutes before we got to Pulley point.

Q. What was your course from Pulley to Robinson?

A. About southeast half south.

Q. Where did you change your course—set your course from Pulley to Robinson?

A. About abeam of Pulley—abreast of Pulley point.

Q. You hauled her back to this course, southeast half south? A. Yes, sir.

Q. What time did you pass Pulley point—what time were you abeam of Pulley? A. 7:53.

Q. Did the Flyer pass you on this night prior to the collision? A. Yes, sir.

Q. About where did she pass you?

A. About Pulley.

Q. What side, how did she pass you?

A. She came up on the port side and she crossed over our stern.

Q. Came astern of you on the port?

A. She came up on the port and passed over on the starboard before she got to us, passed over to our stern on the starboard side.

Q. Give you any signal? A. One whistle.

Q. Did you answer that whistle? A. Yes, sir.

Q. About where did she pass you?

A. About Pulley point.

Q. And about how far off from you?

A. I think about two hundred feet.

Q. Her course in passing you was more to the westward? A. Yes, sir.

Q. After passing Pulley point did you hear any other whistles of any other craft?

A. At Pulley point?

Q. After you passed Pulley and after the Flyer had passed you? A. Yes, sir.

Q. What was that whistle?

A. I heard a whistle, one whistle, one blast of a whistle.

Q. Did you answer that whistle? A. No.

Q. Did the Flyer answer it? A. Yes.

Q. About how far ahead of you was the Flyer at that time when she answered this one blast?

A. I should think about three or four hundred feet, might be more.

Q. How many points off was she to the westward from you, if you noticed?

A. I should think she would be a point or a point and a half.

Q. On which bow? A. On the starboard bow.

Q. At the time of passing Pulley, who was on the bridge of the Virginian? A. The third mate and myself.

Q. Who was on the lookout?

A. One of the quartermasters.

Q. Was Captain Green on deck at that time?

A. No.

Q. How high is the Virginian's deck above the water, or how high from the water on this night to the bridge? A. About forty feet.

Q. About how high is the bridge of the Flyer above the water?

A. About fifteen or twenty feet—it is not twenty feet—about seventeen feet.

Q. That is the bridge on which the navigating officers are located? A. Yes, sir.

Q. Captain, at the time you heard this one whistle answered by the Flyer, could you see any vessel or water craft ahead of you?

MR. HAYDEN: I object to that as leading?

A. No.

Q. Did you know where that whistle came from?

A. No.

Q. Did you try to make it out, or did you try to?

MR. HAYDEN: Same objection: leading.

A. Yes.

Q. What was the condition of the weather at that time? A. It was dark and overcast.

Q. Any fog? A. No.

Q. Did it rain shortly afterwards?

MR. HAYDEN: I object to that as immaterial.

A. I think it rained in Tacoma. It was raining the fore part of the night. It was raining and clouded up and then it rained again.

Q. What did you do when you heard this one whistle which was answered by the Flyer?

A. I asked the third mate if he heard a whistle, or if he could see her, and he said yes.

MR. HAYDEN: I move to strike the conversation.

MR. BOGLE: Yes, you may strike the conversations. Just state what you did?

A. I asked the third mate—(interrupted)

MR. HAYDEN: Captain, I do not want to object or interrupt unnecessarily, but I make objection to your stating conversations which took place. It is what you did, not what was said, or what somebody else said to you, but what you did.

Q. Go ahead and answer.

A. I asked the third mate if he could see anything.

MR. HAYDEN: The same objection, and move to strike it out as hearsay.

A. And he said no, and I went over to the port side to get my glasses. I made every effort to see if I could see anything and I could not see anything, what the Flyer whistled to.

Q. What was the third mate doing at that time?

A. He was standing pretty close to me.

Q. Was he making any effort to locate it?

A. He was.

MR. HAYDEN: I object to that as leading and move to strike the answer.

Q. Did you afterwards hear another whistle, apparently from some point ahead?

MR. HAYDEN: I object to that as leading.

A. Yes.

Q. How long after you heard the whistle from the Flyer? A. About a minute.

Q. What did you do when you heard this second whistle?

A. I went over to the—to get my glasses—rushed over to get my glasses.

Q. The whistle I am talking about now is the first whistle to you. A. Yes, sir.

Q. What did you do then?

A. I went to get my glasses to see if I could locate it.

Q. Did you locate anything?

A. No, I could not locate anything, and I fancied that I could see a hundred and one things, and I ordered full speed astern.

Q. How was your vessel going when you ordered full speed astern? A. Full speed ahead.

Q. Did you stop her at any time between full speed astern and full speed ahead? A. No.

Q. Gave no signal to stop her?

A. Oh, yes; I stopped her.

Q. When did you stop her?

A. When I heard that whistle.

Q. Which whistle?

A. The second whistle that I supposed was for me.

Q. You say the second whistle?

A. I mean when he whistled to the Flyer.

Q. That is the first whistle?

A. That is the first whistle.

Q. That is the first whistle to you?

A. I supposed it was for me.

Q. It was at that time you stopped her? A. Yes.

Q. How long after you heard that whistle?

A. Immediately.

Q. After having stopped her, what did you do?

A. I went over to the port side to get my glasses.

Q. You had stopped before you got your glasses?

MR. HAYDEN: I object to that as leading.

A. Yes.

Q. What did you do then?

A. I tried to pick up the light, or whatever it was,

whether it was a steamer or a gasoliner, or a small or big vessel. I could not make it out.

Q. Did you see anything?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Then what did you do?

A. I ordered her full speed astern.

Q. About how long after you stopped her was it before you ordered full speed astern?

A. Well, it would not be, I do not think, a half a minute.

Q. Is the Virginian a single or twin screw vessel?

A. Twin screw.

Q. At the time of stopping her, did you stop one or both engines? A. Both engines.

Q. At the time of reversing did you reverse one or both engines?

MR. HAYDEN: I object to that as leading.

A. Both engines.

Q. After you had ordered both engines full speed astern—first, who did you give that order to?

A. The third mate.

Q. Did he carry out the order? A. Yes.

Q. Did you hear any other whistles from this craft ahead of you after reversing your—(interrupted)

A. Along about the time of the rebound of the telegraph was a whistle.

Q. What is the telegraph you are testifying to?

A. That is the signal from the bridge to the engine room. It makes quite a racket. You ring it on the bridge and they answer it down below and it comes back. It makes quite a racket.

Q. What is the construction of this telegraph? How is it constructed?

A. Round dial with two handles on it.

Q. And what is on the face of the dial?

A. It goes from full speed astern to full speed ahead, slow ahead, dead slow, half and full.

Q. Is there a similar dial in the engine room?

A. Yes, sir.

Q. Then, you do not signal the engine room by bells, only on this dial?

A. Yes; there is a bell to show that; when you manipulate it it rings in the engine room.

Q. After giving the signal full speed astern did you hear any other whistles from ahead?

MR. HAYDEN: I object to that as leading.

A. Well, I heard the danger signal.

Q. Did you hear any passing whistles? A. No.

Q. When did you hear this danger signal with reference to the time you reversed both of your engines?

A. Well, it must be a minute or over.

Q. Did you answer this danger signal?

A. The captain answered that, or ordered it answered.

Q. Captain Green? A. Captain Green.

Q. When did Captain Green come on deck?

A. When the ship stopped.

Q. How did you answer this danger signal?

A. With three blasts.

Q. What did that signify?

A. That she was going full speed astern.

Q. Had you changed your course—after having set your course from Pulley to Robinson, did you change your course at all?

MR. HAYDEN: I object to that as leading.

A. No.

Q. State what happened after you heard the danger signal and answered it with three blasts?

A. The ships came together. Well, I guess, it did not seem a half a minute. It was not very long.

Q. Did you have a watch or any time piece on deck to keep the time?

A. I did not keep the time at all, sir.

Q. Who kept the time? A. The third mate.

Q. When the two vessels came together, at about what angle did they strike, if you know?

A. I think they were pretty well head on.

Q. What was the effect of the blow upon the Virginian? A. It did not seem very much.

Q. Not very strong? A. No.

Q. Did it give the Virginian a list to either side?

MR. HAYDEN: I object to that as leading.

A. Just barely a list to port.

Q. Did the blow of the collision throw the Virginian off her course at all? A. Very little.

Q. What orders, Captain, were given aboard the Virginian, if any, after the contact of the collision?

A. Well—what orders?

Q. What did you do aboard the Virginian after the vessels had struck?

A. We were not together over a few seconds, and we backed off about three or four hundred feet, and I had the megaphone and hollered what ship it was or how about it or what was it.

Q. Did you get any reply? A. No.

Q. Captain, up to the time of the collision, the actual contact of the two vessels, did you give any orders whatever to change your course after having passed Pulley point and set your course for Robinson?

A. No.

Q. Was the course of the Virginian changed?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Captain, up to the time of the actual contact, had you seen any lights of this vessel ahead, which afterwards turned out to be the Strathalbyn?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Had you been able to make out the outline or loom of the vessel?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Had you seen anything—(interrupted)

A. No.

MR. HAYDEN: Wait a minute; I want to get an objection in here if that kind of questioning is going to be continued.

Q. Had you seen anything, Captain, to indicate to you the position or location of this vessel ahead, so you could make her out?

MR. HAYDEN: I object to that as leading.

A. No, sir.

Q. Captain, the Virginian being a twin screw vessel, would she back straight or not?

MR. HAYDEN: I object to that as leading and suggestive.

A. Yes, she would back straight.

Q. Do you know whether she did back straight on this night or not?

A. She backed straight. I asked the third mate if the compass showed any and he said no.

MR. HAYDEN: I object to that as not responsive to the question, hearsay, and move to strike it out.

Q. After the vessels had been in collision, Captain, after the contact between the vessels, did you see any lights aboard the Strathalbyn?

A. Immediately after, or—(interrupted)

Q. At any time after they came together?

A. Well, when we were about—after the Flyer left—the Flyer came back, after the Flyer came back we could see some lanterns about the deck; I suppose they were lanterns, small lights moving around the deck.

Q. Before that time had you seen either one of her side lights?

A. When we backed away we could see them a couple of—for a few seconds.

Q. Which side light did you see?

A. Port; a red light.

Q. What was the position of the vessel at the time you saw this light?

A. I could just see the light; it was a little on the starboard bow; it was a dim light.

Q. You do not know how the Strathalbyn was lying at that time? A. No.

Q. What kind of a light was that?

A. It was a dim red light.

Q. Did you continue to see that light, or did you lose it?

A. I lost it in a second—in a few seconds. We were backing away, and I suppose she was slewing too.

Q. Did you see her mast head light at that time?

A. No.

Q. What did you do after the collision—after you had backed away, what did you do?

A. Well, this smaller,—we asked the Flyer if he was hurt, and he said—(interrupted)

Q. Just a minute. You asked the Flyer. Had the Flyer—the Flyer had passed you prior to the collision?

A. Yes; but she came back to the two ships.

Q. After the collision? A. Yes, sir.

Q. How long after the collision was it before the Flyer reached you?

A. A minute—oh, it must be a couple of minutes. It might be longer than that.

Q. What was the Virginian doing at the time the Flyer came back? A. She was laying still.

Q. Could you state what the Strathalbyn was doing? Could you see her?

A. I could see her more with the Flyer's lights. We could see the outline of her with the Flyer's lights.

Q. Could you state how she was heading?

A. She was across the sound. We were abaft her beam. She was heading towards Des Moines.

Q. What would the angle be between the Virginian and the Strathalbyn? What would the angle be between their courses, approximately?

A. It would not be right angles.

Q. Would it be more or less than a right angle?

A. It would be less than a right angle.

Q. How long did you lie there, Captain, before you gathered headway?

A. Oh, I guess it would be five or six minutes. It might be more than that.

Q. And then what did you do?

A. We followed her up as near as we could.

Q. Well, just go ahead and state what you did after that?

A. She headed—we supposed—she was heading over for Robinson's point, inside of Robinson's point, and we kept following her up. We would stop, and then go ahead slow, stop and go ahead slow, and that is the way we were going for twenty-five or thirty minutes.

Q. Then, here did the Strathalbyn go?

A. She went close to Robinson's point, inside of Robinson's point, pretty well under Robinson's point.

Q. Did you follow her in there? A. No.

Q. What did you do?

A. We waited around. We did not blow any

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whistles. We would holler through the megaphone, but he could not hear us, or if he did hear us he didn't answer. Then we squared off around Robinson's point for Tacoma. We said, "we will go to Tacoma."

Q. Did you see any lights aboard the Strathalbyn when you passed her around Robinson's point?

A. Yes; when we passed her around Robinson's point we seen her mast head light.

Q. What was the appearance of that light?

A. Flare up and then go down. Some times we could see it and then could not.

Q. About how long did you see that light?

A. Well, from the first time we saw her, it would not be over—about a minute from the time I got up to Robinson's point until I got around it.

Q. Did you see it during all of that time?

A. Off and on.

Q. When it would flare up and you would see it?

A. Yes.

Q. And you continued on to Tacoma?

A. Yes, sir; we continued on to Tacoma. It would not be a minute while we were going around Robinson's point. It would not take a minute to get around Robinson's point. It would only be from the time. We were kind of abeam of the point, and then to change the course from southeast to about south by west, it would be only on the swing, and then we would come broad side to the ship.

Q. Do you know what time the Steamer Strathalbyn arrived in Tacoma after the collision?

A. No, sir; I do not.

Q. Did you go aboard of her the next morning?

A. No.

Q. Captain, about what time did this collision occur? A. About between 7:59 and 8 o'clock.

Q. About between 7:59 and 8 o'clock?

A. Yes; I do not know whether it was—(interrupted)

Q. About where did the collision occur, Captain?

A. It must have been a mile or a mile and a half—between a mile and a half or two miles southward of Pulley point.

Q. Captain, at the time of this collision, did the Virginian have any forward movement?

MR. HAYDEN: I object to that as leading.

A. I think she was about stopped.

Q. You think she was about stopped?

MR. HAYDEN: Same objection.

A. About stopped.

Q. What makes you think that?

A. The way they come apart. It was only a second, when we seemed to come together and then went away again.

Q. Did you look over the side of the Virginian to see whether she was going forward through the water?

A. I could not tell. The back water from the propellers was all the way forward of the bridge.

Q. You could see the back water churned up—
(interrupted)

A. Yes; away forward of the bridge.

Q. Could you have seen that water if the Virginian had had any considerable headway on her?

MR. HAYDEN: I object to that as leading.

A. No, sir, I do not think so.

Q. Did you notice the Flyer, Captain, at the time of the collision? A. No, sir.

Q. How far ahead of you she was at that time?

A. No, sir; I was not watching the Flyer.

Q. Did the lookout, Captain, report any lights prior to the collision; that is, from the time you passed Pulley point did he report any lights? A. No.

MR. BOGLE: I think that is all.

WHEREUPON, Recess was had till 1:15 p. m., this date.

Testimony resumed. 1:15 p. m., Dec. 10, 1912.

THOMAS JOSEPH DUFFY on stand.

DIRECT EXAMINATION (Continued).

BY MR. BOGLE:

Q. There is another question I wanted to ask. Captain, how far did you pass off of Pulley point prior to the collision; how far were you off the point?

A. When we were abreast—when we were abaft the point?

Q. Yes; prior to the collision.

A. About a half a mile.

CROSS EXAMINATION.

BY MR. HAYDEN:

Q. You say you left Seattle at what time?

A. 6:40.

Q. What time did you get to Duwamish head?

A. I do not think we marked that down. I think there was a couple of fishing boats there. We gave Duwamish head a pretty wide berth; there was a couple of fishing boats there.

Q. You do not remember the time you passed Duwamish head? A. No.

Q. How far off from Duwamish head were you when you passed it?

A. Oh, I should think it would be a mile or three-quarters of a mile.

Q. Between a mile and three quarters of a mile?

A. Yes; somewhere around that.

Q. You passed Alki at what time? A. 7:12.

Q. When you left Seattle from what part did you leave? A. The Oriental dock.

Q. What is the distance between the Oriental dock and Alki point?

MR. BOGLE: We object to that; you can get that from the map and the charts in evidence.

A. I think it is about five miles.

Q. When you speak about miles, you are talking about nautical miles? A. Yes.

Q. What is the distance between Alki point and Pulley point?

A. That is seven and three-quarters—we call it eight miles.

Q. When you say you left Alki point at 7:12 you mean you had Alki point abeam? A. Yes, sir.

Q. And you were off how far? A. About a mile.

Q. And you were off how far from Pulley point? A half a mile when you had it abeam?

A. About a half a mile, as near as you could judge.

Q. The Flyer overhauled you between Priest point and Pully point, didn't it? A. Yes.

Q. How far abreast of Priest point?

A. Well, she was closer to Pulley.

Q. Closer to Pulley. Now, when I say, "overhauled you" and you say, "yes" what do you mean by "overhauled you"? A. When she was coming up astern.

Q. And when she got up to your stern, where were you, north of Pulley point? A. Yes.

Q. How far north of Pulley point?

A. Well, I should think a mile, between a mile and three-quarters. Somewheres around there. Between a mile and three quarters, I guess.

Q. North of Pulley point when the Flyer came up to your stern? A. Yes.

Q. Do you know how fast you were going that night? A. Yes.

Q. How fast? A. Eleven knots.

Q. Did the Flyer pass your bow before you got around Pulley point?

A. She—do you mean did she pass us before we got around Pulley?

Q. Yes; before you got around Pulley?

A. Well, about that. She might have been. She might be forward of the beam, abeam, or forward of the beam at Pulley point.

Q. Now, I understand from your testimony that you heard the first whistle when the Flyer was three hundred or four hundred feet, something like that, ahead of you? A. Yes.

Q. Do you know how fast the Flyer was going?

A. No.

Q. Captain Burns testified that she was going fourteen and a half knots. Is that about right?

A. They will say she is sixteen and seventeen knots, and again fifteen, and they will claim she is a fifteen knot boat. I do not know.

Q. She went by you quite rapidly? A. Yes.

Q. Going quite considerably faster than you?

A. Yes, sir.

Q. You would judge about fourteen and a half knots or fifteen knots would be about the correct speed?

A. Somewheres around there.

Q. Did you hear a whistle to the Flyer prior to the Flyer's whistle? A. Yes, sir.

Q. What time elapsed between the first whistle you heard and the Flyer's whistle?

A. There was not very much. I do not know just how much.

Q. How much do you estimate? What is your recollection of that now?

A. It was only a few seconds.

Q. Would it be longer than the ordinary time for whistles to answer each other?

A. Yes; it seemed a little longer than ordinary.

Q. How long is the ordinary?

A. They generally answer right away. Just as soon as the whistle blows, why the other fellow answers him.

Q. How much longer than the ordinary would you say this was? A. A few seconds.

Q. Fifteen seconds, maybe? A. A few seconds.

Q. What do you mean by a few seconds? A few sometimes means a great many and some times a very small number.

A. It might be five or six seconds.

Q. You say the Flyer passed you about 200 feet off? A. Yes.

Q. Right along your side and kept parallel with you? A. About two hundred feet off.

MR. BOGLE: I object to that question. He made no such statement as that.

Q. What is the fact?

A. She passed about two hundred feet off.

Q. Did she run parallel with you when she was passing you?

A. I cannot tell. She was running by and I am not sure when we were passing his stern lights. He might have changed.

Q. Fifty or a hundred feet away and you could not tell. If she did, you could not tell?

A. No, sir; nobody could.

Q. As I understand your testimony, when the Flyer whistled she was about a point off your starboard bow?

A. Yes.

Q. Did you ever calculate how many feet your vessel would be running a minute? A. No.

Q. Can you calculate it?

A. Well, now, I suppose you could.

Q. How many feet is in a nautical mile?

A. Six thousand and eighty feet.

Q. You were going eleven nautical miles an hour, you said?

A. Yes; that is what the captain told me she was going.

Q. I wish you would just multiply six thousand and eighty by eleven, Captain.

A. Well, I am not much on figures.

Q. You can multiply six thousand and eighty by eleven? A. No.

Q. Well, I make it sixty-six thousand, eight hundred and eighty feet. A. How much?

Q. Sixty-six thousand, eight hundred and eighty feet. That is the number of feet you would make in an hour, is it not, going eleven knots?

A. In going eleven knots, yes, sir.

Q. In one minute you would make one-sixtieth of that, wouldn't you? A. Yes, sir.

Q. That would make you go in one minute eleven hundred and eighty-eight feet, wouldn't it? That is right, is it not? A. Yes, sir; I suppose.

MR. HAYDEN: No; that is not right; just strike that.

MR. BOGLE: We object to all this testimony; anyone can figure out from the data which has been given, at least the Court can.

Q. It would be eleven hundred and fourteen and four-sixths feet, Captain. Now, the Flyer was going fourteen and a half knots an hour. Multiplying six thousand and eighty by fourteen and a half, I get eighty-eight thousand one hundred and sixty feet.

MR. BOGLE: We object to that. This witness does not know how fast the Flyer was going, and does not know how fast the Virginian was going excepting the statement of the captain.

A. I know how much time she made from point to point.

Q. Well, we will just suppose she was going this fast. That is the testimony of your own captain and

the captain of the Flyer. A. I know the points.

Q. Now, the Flyer then would go in one minute sixty into eighty-eight thousand one hundred and sixty, which I make fourteen hundred sixty-nine and one-third feet. Now, you say when the Flyer gave her whistle to the Strathalbyn, she was between three hundred and four hundred feet, something like that, ahead of your vessel. A. Well, as near as I could judge.

Q. The difference, then, between the speed of the Flyer and the speed of the Virginian, going in the same direction, in one minute, would separate them three hundred and fifty-five feet. So, if the Flyer was opposite your beam when you were at—or passed you when you were opposite Pulley Point, and she was only three hundred or four hundred feet ahead of you, you would have traveled one minute by Pulley Point when the first whistle was given. Now, Captain, in that one minute you would go eleven hundred and fourteen feet. You said this morning that you thought this collision occurred one and one-half to two miles, nautical miles, if I remember, from Pulley Point?

A. I said a mile or a mile and a half. It was about, as near as I could judge, about a mile or a mile and a half.

Q. Do you want to correct that at all after this calculation is made, as to the distance the Flyer was ahead of you? A. Oh, no.

MR. BOGLE: We object to that. The captain has no knowledge as to how fast the Flyer or the Virginian was going, and he does not know your figures are correct. He is testifying from his own knowledge.

Q. You do not want to make any correction at all about that? Don't you think you were closer to Pulley point than a mile and a half or two miles?

MR. BOGLE: We object to that. The captain has testified as to what he thought.

A. What was that again?

(Last two questions and answer read).

A. About a mile or a mile and a half, I think, to Pulley point.

Q. You do not think you were two miles?

A. No; between a mile and a mile and a half.

Q. What is the distance between Pulley point and Robinson's point?

A. About three and three-quarters—we call it four miles.

Q. Why do you call it four miles?

A. The way we do that is from—all of the pilots that ever I talked with, we would say eleven miles from Robinson's to Alki.

Q. Is it because you measured between the changes of your courses?

A. Some times you change the course differently. You give Robinson's point a different berth in different ships, if you have a light draft ship, you go closer; if you have a heavy draft ship, you go further off. They make two courses. In some ships, like the Flyer, Indianapolis, Multnomah and the Greyhound, they make one course from Robinson's to Alki, but generally with a big ship you make two.

Q. Did you change your course before or after the Flyer passed you?

A. About when the Flyer was with us. I am not sure whether she was by us or alongside of us when I changed the course. When we were abeam of Pulley point, I changed the course.

Q. How long a time elapsed between the time you heard the Flyer whistle answering the Strathalbyn and the Strathalbyn's next whistle? A. About a minute.

Q. About a minute?

A. Yes—oh, between the Flyer and the Strathalbyn whistle?

Question and answer, lines 7 and 10 read)

A. Yes.

Q. About a minute? A. Yes.

Q. It would be about a minute, then between the Flyer's whistle and the second whistle of the Strathalbyn? A. Yes, sir; about that.

Q. And your vessel was going ahead all of that time? A. Yes, sir.

Q. At whatever speed she had been going just prior to that? A. Yes.

Q. Now, how long a time elapsed between this sec-

ond whistle of the Strathalbyn before you heard her next whistle?

A. The next whistle? I did not hear that that good.

Q. Well, you heard it?

A. It would be a minute or somewhere around a minute.

Q. Now, how much time elapsed after you heard that whistle until you heard the next whistle of the Strathalbyn?

MR. BOGLE: I object to that; he did not testify that he heard another whistle.

A. I did not hear another whistle.

Q. I think you testified that you heard some more whistles of the Strathalbyn? A. No.

Q. Didn't you testify that you heard some more whistles of the Strathalbyn?

MR. BOGLE: Get the witness straight. Do you mean passing whistles?

MR. HAYDEN: I said whistle. Didn't you hear any more whistle or whistles from the Strathalbyn?

A. I only heard one distinct whistle from the Strathalbyn. There was another whistle that I heard faintly that was gone by the time I was ringing the telegraph.

Q. You say another whistle?

A. Only heard the danger whistle.

Q. What time elapsed between the time you heard the danger signal and the time you heard this whistle you say you heard faintly?

A. That must have been a minute, I should judge, or two minutes.

Q. Did you say a minute and a half or two minutes?

A. From the time she blew the first whistle it was a minute and a half to two minutes, or two minutes.

Q. This is between the whistle you heard faintly and the danger whistle, you say a minute and a half or two minutes. Is that correct? I want to know whether I understand you.

A. It was two minutes.

Q. How long a time elapsed between the danger

signal you heard from the Strathalbyn and the danger signal of three whistles you say you gave?

A. Before they came together?

Q. No; you say the length of time between the Strathalbyn's danger signal, which is four whistles—is that right? A. Yes, sir.

Q. And your three whistles?

A. There was hardly any. We answered them right away.

Q. They came right on top of each other?

A. Yes, sir.

Q. How long a time elapsed between your three whistles, after your three whistles were blown and the collision?

A. Well, it seemed about half a minute or a minute.

Q. You say about between a half a minute and a minute?

A. Pretty nearly a minute. I had not any time to judge, only guess at it.

Q. The same way you are guessing about the others. Did you hear, or do you remember of hearing the Strathalbyn blow three passing whistles? A. No.

Q. The way I figure up your time here, there was about four minutes elapsed from the time you heard the Strathalbyn's first signal to you after the Flyer had answered it and the time you came into collision. Is that the way you mean to have it?

A. Well, it is pretty near that; somewhere around there.

Q. Now, you ran one minute after you heard the Strathalbyn's first whistle to you before you gave the stop bell?

MR. BOGLE: We object to that; he testified exactly the opposite.

A. I stopped when the Strathalbyn blew to us.

MR. HAYDEN. Mr. reporter, will you go back and read Mr. Duffy's answer to the question a little further back there?

(The following was read to the witness by the reporter):

"Q. How long a time elapsed between the time you

heard the Flyer whistle answering the Strathalbyn and the Strathalbyn's next whistle?

A. About a minute.

Q. About a minute?

A. Yes—oh, between the Flyer and the Strathalbyn whistle?

(Question and answer, lines 5 and 8 read)

A. Yes.

Q. About a minute? A. Yes.

Q. It would be about a minute, then between the Flyer's whistle and the second whistle of the Strathalbyn? A. Yes, sir; about that.

Q. And your vessel was going ahead all of that time? A. Yes, sir.

Q. At whatever speed she had been going just prior to that? A. Yes.

Q. Now, how long a time elapsed between this second whistle of the Strathalbyn before you heard her next whistle?

A. The next whistle? I did not hear that that good.

Q. Well, you heard it?

A. It would be a minute or somewhere around a minute.

Q. Now, how much time elapsed after you heard that whistle until you heard the next whistle of the Strathalbyn?

MR. BOGLE: I object to that; he did not testify that he heard another whistle.

A. I did not hear another whistle.

Q. I think you testified that you heard some more whistles of the Strathalbyn? A. No.

Q. Didn't you testify that you heard some more whistles of the Strathalbyn?

MR. BOGLE: Get the witness straight. Do you mean passing whistles?

MR. HAYDEN: I said whistle. Didn't you hear any more whistle or whistles from the Strathalbyn?

A. I only heard one distinct whistle from the Strathalbyn. There was another whistle that I heard faintly that was gone by the time I was ringing the telegraph.

Q. You say another whistle?

A. Only heard the danger whistle.

Q. What time elapsed between the time you heard the danger signal and the time you heard this whistle you say you heard faintly?

A. That must have been a minute, I should judge, or two minutes."

Q. As I understand it you were ringing the telegraph at the time you heard this faint whistle at the time you telegraphed to back her?

A. Yes, sir; full speed.

Q. When did you ring to stop or back her the first time?

A. When she whistled to me, as I thought it was to me, the first whistle after she whistled to the Flyer.

Q. You thought that whistle was for you?

A. Yes.

Q. And then you stopped her? A. Stopped her.

Q. Then, you do not mean that after that whistle you were running for a minute at the same speed you were running before? A. Well, she was stopped.

Q. I asked you in a prior question if you did not continue to run after you heard the second whistle of the Strathalbyn, which would be the whistle after the one the Flyer answered.

A. Stopped then—(interrupted)

MR. BOGLE: I would like to find out what that question is. I do not think that question has been asked.

(Questions and answers just read by reporter, re-read)

Q. Now, which whistle was it that caused you to stop your vessel?

A. When—about a minute after he blew that whistle—from the time he whistled to the Flyer, then the next time that whistle came he whistled, I supposed, for me. I could not see him, so I stopped.

Q. That was after the second whistle of the Strathalbyn?

A. Yes; the first whistle was to the Flyer and the second to me.

Q. Then you stopped? A. Yes, sir.

Q. Then you did not hear anything more at all for two minutes?

MR. BOGLE: I object to that. That is not what he testified to.

Q. Did you hear any more whistles? A. Yes.

Q. How long after the second whistle was it before you heard another whistle?

A. When we rung out to go full speed astern.

Q. How long was that?

A. That was between a half a minute and a minute.

Q. About half a minute?

A. It might have been—I should judge it was less than a minute—about that.

Q. Had you run your engines full speed astern before you heard that whistle or afterwards?

A. She was going full speed astern then, or the telegraph was rung.

Q. You had rung then, prior to hearing the third whistle?

A. I did not hear the third whistle—well, yes; that would be the third one; the one to the Flyer, the one to us, and the third one.

Q. Do you know how far the Virginian would go in a minute or the space of time between the time you stopped your engines and rung full speed astern?

A. From the time it was going full speed ahead until it was going full speed astern?

Q. No. From the time you stopped your engines until you rung them full speed astern?

A. I should think she would go about three-quarters of a mile.

Q. In a minute? A. Oh, no.

Q. I probably have not the right time. What was the time between the second whistle of the Strathalbyn and the third whistle of the Strathalbyn?

A. I guess about a minute.

Q. Now, you rung your engines to stop just after you heard the second whistle? A. Yes.

Q. How far would the Virginian go between the time you rung your engines to stop on the second whistle and the time you gave the signal full speed astern?

A. She would be almost going just as fast—her speed—the momentum of the ship would be—she would

be going ahead all of the time. I do not know just how fast she would go.

Q. Now, what length of time elapsed—if I am not mistaken, you said about two minutes between the third whistle of the Strathalbyn and the danger signal. That is what you said, isn't it?

A. From the third whistle?

Q. Yes.

A. Well, it would be a minute and a half or two minutes.

Q. And how long a time elapsed, did you say, between the danger signal to the time the vessels came together? Half a minute to a minute, was it? A. Yes.

Q. Now, during all that time, you say you did not know—that you did not see any lights ahead, but you say you think you saw something?

A. I saw a hundred and one things.

Q. What do you mean by that?

A. Well, I had the glasses, you know—I got my glasses and and I was not sure—I could not make out anything, and I fancied I could see something, or some black object. I could not find it again, and so I went full speed astern.

Q. You did not search for anything with your glasses prior to stopping your engines?

A. Not with the glasses.

Q. And you didn't see anything then, prior to stopping your engines? A. No.

Q. You didn't see anything, did you when the Strathalbyn first whistled to the Flyer? A. No.

Q. You could not see anything of the Strathalbyn at all? A. No, sir.

Q. But you saw the Flyer all the time?

A. Yes, sir.

Q. You did not see any headlight, or light that looked like a range light on the Strathalbyn at that time?

A. No, sir.

Q. Did you see any light afterwards that you think you might have mistaken for a shore light? A. No.

Q. The light you saw on the Strathalbyn after the collision, you do not think you might have mistaken that for a shore light at all? A. No, sir.

Q. Captain, when the Flyer passed you Captain Burns said that he saw a mast head light, what he took to be a mast head light, and the range light, when the Flyer passed you. Were you on the bridge at that time?

A. Yes; both off and on.

Q. What were you doing on the bridge?

A. Looking ahead.

Q. Why do you suppose you could not see these lights when the Flyer saw them?

A. I do not— (interrupted)

MR. BOGLE: Just a minute. We object to that as being incompetent. The testimony of Captain Burns of what he saw from a different location, a different position, would not affect this witness' testimony.

A. I do not know.

Q. Captain, the lighthouse keeper and his wife on Pulley point testified that they saw the Strathalbyn's lights off towards Robinson's point when she was coming up there. I would like some explanation from you why you could not see it.

MR. BOGLE: Wait a minute. I object to that for the reason that the lighthouse keeper and his wife gave no such testimony, and it is not proper cross examination. There is no such testimony in the record.

A. Well, I cannot account for it. I can see. My eyes are all right. I could not see her.

MR. BOGLE: It makes no difference what anybody else saw. This man is testifying from his own knowledge.

Q. Captain, you said no light was reported by your lookout between Pulley point and the time of this collision.

A. Pulley point? I forget now how many lights he did. I do not remember.

Q. You saw a red light ahead of you, didn't you, Captain- A. At Robinson's point, you mean?

Q. A red light ahead?

A. I seen Robinson's point.

Q. In the Ledger, Sunday, January 14th, there is this statement made: "Pilot Duffy says the steamer's red light was visible for half an hour, and he thought

it was the light on Robinson's point." Do you remember making that statement?

A. Never in the world; never.

MR. BOGLE: We object to any statement which might have appeared in the Tacoma Ledger as being improper.

Q. You remember having a newspaper man interview you in connection with that? A. Not me.

Q. Never even spoke to you about it afterwards?

A. One asked me, and I told him to see Captain Green.

Q. You never said a word?

A. No, sir; I never said a word to anybody.

Q. Captain, one of the officers on your own vessel testified that just prior to the collision that he saw a light aboard the Strathalbyn. Did you see a light aboard the Strathalbyn just prior to this collision?

MR. BOGLE: We object to that because no such testimony appeared.

A. No, sir.

Q. When did you first get the loom of the Strathalbyn?

A. When the Flyer was between us and the—between the Virginian and the Strathalbyn; the lights of the Flyer—she went over to the Strathalbyn first and then she came to us.

Q. When the Flyer was between you and the Strathalbyn? A. Yes.

Q. Did you not see her when the Flyer was on the other side of the Strathalbyn, then? A. No.

Well, I might have seen the loom, but I do not know which side. We might have got the loom of the black hull of the ship.

Q. That is the first you knew what hit you?

A. Yes; well, we did not know then what hit us.

Q. You knew something hit you, didn't you?

A. Yes, sir.

Q. You knew you had been afoul of something?

A. Yes, sir.

Q. What did you suppose it was?

A. We supposed it was a ship.

Q. And you had not been able to pick her up at all during that time? A. No.

Q. When the Flyer gave one whistle and the Strathalbyn gave one whistle to the Flyer, you knew that a vessel was whistling to pass the Flyer, didn't you?

A. Yes; I knew there was something.

Q. And that those vessels were passing port to port?

A. Well, I supposed that was what it was.

Q. That is what you supposed at the time was the case? A. Yes, sir.

Q. Then, when they gave the next whistle from the Strathalbyn, you knew something was coming towards you from Tacoma, didn't you? A. Yes.

Q. And that that whistle was a whistle for your vessels to pass port to port?

A. Well, I suppose it was.

Q. At that time you supposed it was? A. Yes.

Q. Now, I suppose you were in some doubt as to what was ahead of you?

MR. BOGLE: I object to the form of the question.

A. Yes.

Q. I suppose you were in doubt as to the direction that vessel ahead of you was going in, were you not?

A. Yes, sir.

Q. You were in doubt as to the course it was taking too? A. Yes, sir.

Q. And you were in doubt as to the speed she was going? A. Yes, sir.

Q. The only whistles that were blown from your vessel at all were the three whistles that came after you heard the four whistles from the Strathalbyn? A. Yes.

Q. Now, when these whistles were being blown, Captain, the Flyer was in plain sight of you all the time, was she not? A. Yes.

Q. You did not know what they intended to do on board of the Strathalbyn at the time they whistled to you the first time? A. No, sir.

Q. Who was in control of the navigation of the ship that night? A. Of the Virginian?

Q. Of the Virginian, at the time of the collision, yes. A. I was pilot.

Q. You had control? A. Yes, sir.

Q. The man on the bridge who was giving orders and directions? A. Yes, sir.

Q. It was Captain Green that gave the direction to go full speed astern? A. No.

Q. It was Captain Green who blew the three whistles? A. Yes.

Q. You did not give that direction?

A. I did not give the direction for blowing the three whistles.

Q. That was after Captain Green came out from down below? A. Yes.

Q. He had been below, hadn't he? A. Yes.

Q. How long had he been on the bridge before he gave those three whistles?

A. He just came up on the bridge. He was not up on the bridge—I do not know exactly how long. He just came up when I stopped.

Q. Came up after you stopped?

A. When the ship was stopped—when the telegraph was rung to stop her, Captain Green ran up on the bridge.

Q. Then he got up on the bridge after you rang to stop? A. Yes, sir.

Q. How long was he on the bridge before the collision?

A. Well, it would be, I should think, half a minute; between half a minute and a minute.

Q. Do you think he was on the bridge as long as between a half a minute and a minute?

A. Yes; I think he was.

Q. You think that is about right, do you?

A. Yes, sir.

MR. BOGLE: Read the question.

Q. Do you think Captain Green was on the bridge from half a minute to a minute before the collision?

A. Yes.

Q. And you think he came up about a half a minute or a minute before the collision?

A. Yes; he came up just when the telegraph stopped. I did not notice him coming up. He came up and I did not notice him. I was watching ahead then. I

did not notice that Captain Green came up on the bridge. This is only guess work on my part, about him rushing up.

Q. How do you know?

A. He said to the men that he did.

Q. But you did not see him? A. No, sir.

Q. When did you first see him?

A. When he answered them with three whistles.

Q. What course did you take from Duwamish head to Alki point?

I think it would be,—I am not sure. I think it was south southwest.

Q. You are not sure about that now? A. No, sir.

Q. What course did you take from Alki point to Pulley point?

A. Southwest by south, a quarter south.

Q. Then somewhere around about Pulley point you stood over to the eastward about a quarter of a point?

A. Yes, sir; before I got to Pulley.

Q. Before you got to Pulley? A. Yes, sir.

Q. And did you change your course when you got to Pulley?

A. We changed the course just before we got to Pulley. The point looked close and I pulled her out a little.

Q. The point looked close?

A. Yes. The Flyer was a little to the front.

Q. Then you pulled her out to the westward?

A. Yes, sir.

Q. How long did you run on that course after you pulled her out to the westward?

A. A couple or three minutes.

Q. Did you put that into your log book?

A. Yes—well, the log book—you see, I didn't keep any log. I kept no time. The third mate has done all this—or on the compass up above. I give this course and he goes up and sets the course.

Q. But you thought you were going to cut Pulley point a little close?

A. Yes; I had lots of room, and on general principles.

Q. You turned her out a quarter of a point to the westward, then. Is that right? A. Yes.

Q. Now, where was the Flyer when you changed your course between Alki and Pulley towards the west?

A. She was, oh, a couple or three—well, just astern of us a little to the port side.

Q. Just astern of you a little to the port side. Then, as she was passing you, coming from your port side to your starboard side you at that same time changed your course more to the westward?

A. No, sir. I did not change any—I just changed it once. I did not change for the Flyer.

Q. You said you had to haul out—(interrupted)

A. Yes; off the point.

Q. Off the point. Well, I am trying to find out where you and the Flyer were when you changed, hauled off the point. A. She was astern.

Q. How far astern?

A. Two or three lengths of the Flyer.

Q. Two or three lengths of the Flyer?

A. It might have been closer.

Q. Had she given a passing signal when you changed your course to the westward? A. No, sir.

Q. You changed your course after she gave the passing signal? A. Yes, sir.

Q. Do you remember how long before?

A. It might be three or four minutes.

Q. Three or four minutes before the Flyer gave you the passing signal?

A. Yes; when she was astern of us.

Q. To put it another way, Captain: How far north of Pulley point were you when you changed your course to haul out and miss Pulley point?

A. It would not be over a thousand feet.

Q. It would not be over a thousand feet?

A. No, sir; if it was that much.

Q. Then you ran on that course for two or three minutes? A. Yes, sir.

Q. Then you shifted your course again?

A. At Pulley.

Q. At Pulley, yes. You came back towards the eastward more? A. Yes.

Q. Now, what course were you on between the time you shifted a thousand feet north of Pulley point until the time that you shifted after you got by Pulley point?

A. What was our course?

Q. Yes.

A. Well, I suppose it was a quarter.

Q. How many degrees would that be?

A. That would be three degrees.

Q. About three degrees. A. Three degrees.

Q. Then after you got by Pulley point, what course did you then take to go to Robinson's?

A. Southeast half south.

Q. Southeast half south? A. Yes, sir.

Q. You were not where you could see the compass, were you? A. No, sir.

Q. You were not where you could see whether your vessel's head was swinging one way or the other, more or less?

A. I can see that by the lights when he is steering, sir.

Q. What lights? A. Any lights ashore.

Q. There were some lights ashore? A. Yes, sir.

Q. What kind of lights were those ashore?

A. There was Robinson's point— (interrupted)

Q. You were not heading for Robinson's point.

A. I was not?

Q. You were not heading for Robinson's point light. A. No.

(Last two questions and answers read)

Q. How much of your course would carry you east of Robinson's point?

A. The second or first course, Alki to Pulley or Pulley to Robinson's?

Q. The one from Pulley to Robinson that you finally took? A. The one from Alki to Pulley?

Q. From Pulley to Robinson's, the one you finally took. A. A point and a half to two points.

Q. How far would that carry you? How far would you be off Robinson's point when you passed it on that course?

A. I figure it would be three-quarters of a mile off Robinson's point.

Q. You didn't notice the Indianapolis coming up that night, did you? A. I seen her.

Q. Where did you see her?

A. When she was on the port side.

Q. Where did you first see her?

A. Oh, I could see her coming for a mile, almost. I could see up to Robinson's point, and I could see her coming down. She was well clear of us, so I didn't bother much about her at all.

Q. From what you said, I take it that it is absolutely impossible for you to state how you struck the Strathalbyn, at what angle, on account of the fact, you say, you could not see her at all?

A. I could not see her, but when she hit, and from the way of everything afterwards, it seemed right head on.

Q. At the time of the collision, you could not tell at all, could you? A. No.

Q. You could not tell her what angle you struck her at? A. No, sir.

Q. You said the head of your vessel was turned somewhat to the starboard, if I am correct?

A. Turned to port.

Q. What? A. Turned to port.

Q. The head of your vessel was turned to port by the impact of the collision? A. Yes, sir.

Q. How much to port?

A. Well, very little. I did not look at the compass. I asked the second mate and he said about half a point or three-quarters of a point. I asked the third mate.

Q. And he said a half a point to three-quarters of a point? A. Yes, sir.

Q. So, after the collision you went ahead in the same direction you were when you took the course?

A. No; we were about, I should think about a point—we backed away from them, and then when they came together she went off a little, I guess, to three-quarters of a point or a point. Her bow was turned more to port.

Q. When you backed off from her, how were you heading after getting through backing away after the—from the collision? A. I did not notice.

Q. About with reference to what point on the shore.

A. It would be close to Des Moines, over in that direction, in that bight.

Q. As soon as you backed off from the Strathalbyn, you headed over close in towards Des Moines?

A. We were heading that way, but not very close.

Q. As I understand it, your vessels came together and you say they were together a very little time?

A. Very little.

Q. And then you backed straight away?

A. Yes, sir.

Q. And when you backed away you headed toward Des Moines?

A. We were heading straight, but it would be naturally that way, closer than she would to Robinson's point.

Q. How was the Strathalbyn heading as soon as you backed away? Do you know? A. I could not tell.

Q. You could not see her? A. No, sir.

Q. When you did first see her, how was the Strathalbyn heading?

A. The first time we could make the outline of her she was headed pretty well for Robinson's point, close over to Maury Island.

Q. When you first could make out the outline of her, she was heading towards Robinson's point?

A. Well, from the lights on her deck and the crew running with the lanterns.

Q. I think you said you could make her out when the Flyer came up?

A. The Flyer—well, this was after the collision.

Q. The Flyer came up after the collision. Which was the first time you could make out her outline as to how she was headed?

A. I could not make out her outline as to how she was headed. I suppose she was headed the way she was going, because we were going ahead and stopping, and we were drawing over to the point and we were following those lights.

Q. Off towards Robinson's point?

A. We kept porting and porting, and as soon as she —to keep in touch with those lights, and as soon as we would see the lights, we would follow her up.

Q. You did not see any stern lights on the Strathalbyn at all? A. No, sir.

Q. You didn't? A. No, sir.

Q. Didn't see anything you took to be a stern light?

A. No, sir.

Q. How much aft of her beam would you be following the Strathalbyn from the point of collision over to Robinson's point?

A. I do not know, because some times we would be forward of the beam and some times aft of the beam, because we were stopping, and then go ahead, and then stop, go ahead, and continued to do that.

Q. You would run up by her beam, and then go back of her beam? A. Yes, sir.

Q. You did see the red light on the Strathalbyn some time?

A. Just when we were getting away from her after the collision.

Q. What do you mean by getting away from her?

Q. While you were together?

A. When we got apart.

Q. When you got apart? A. Yes, sir.

Q. You didn't see it when you were going into her?

A. No, sir.

Q. But you did see it when you got apart?

A. Yes, sir.

Q. You didn't see the mast head light at all, as I understood you to say? A. No, sir.

Q. You didn't even see it after the collision until you got down to Robinson's point?

A. Yes; until we were leaving her. We were leaving her then.

Q. Until you were leaving her at Robinson's point. You did not see anybody then haul up a lighted lamp on the fore part of her where her mast head light would be? A. No, sir.

Q. You didn't see anybody lower down a mast head light? A. No, sir.

Q. You were looking for lights?

A. I was looking for lights. I seen lanterns around the deck, some times. I suppose forward or aft. You

could not tell anything, but there was two or three, and then they would rush forward.

Q. But you were looking so as to keep track of her right along, keeping an eye on her?

A. Yes; I had my glasses.

Q. You never say anybody haul a mast head light up or lower it down, haul it up and lower it down?

A. No, sir.

Q. You saw the mast head light burning when you left her at Robinson's point?

A. Flicker up and go out; flicker up and go out.

Q. Like an electric light, would it go entirely out?

A. Almost.

Q. Would it go entirely out?

A. It would not go out entirely. You would see a light faint and then go up a little bit better, but it never was bright.

Q. When you passed at Robinson's point, did you see the side light? A. No.

Q. Did you look for it?

A. Yes; I kept looking at her all the time.

Q. You did not see the side light at all?

A. No, sir.

Q. You passed on her port side?

A. Yes, sir. I suppose it would be the port side.

Q. Now, when you drew up beyond her beam as the Strathalbyn was going from Pulley point to Robinson's point, did you see the side light at any time then?

A. No; I do not know as I ever was forward or aft of her beam.

Q. I thought you said forward.

Q. I said I did not know whether I was forward or aft of the beam at any time.

Q. How far away were you from the Strathalbyn when you saw her red light immediately after the collision?

A. Well, it would be about three hundred feet, I should think. I should judge about three hundred feet.

Q. You saw it how many points over your bow?

A. It would be about two points, I think, or two and a half—two points.

Q. Two points off what bow?

A. Off the starboard bow.

Q. Off the starboard bow?

A. She was swinging and we were backing up.

Q. You say she was swinging. The fact is, you do not know she was swinging?

A. I do not know. I suppose— (interrupted)

Q. How did you know?

A. We lost it right there.

Q. How long did you see it, Captain?

A. I only see it a few seconds.

Q. Now, you figure three hundred feet. Was that 200 feet to your bow and 100 feet off?

A. I am figuring—I have no way of figuring; it might have been closer.

Q. That is the way you tried to figure, two hundred feet to the bridge from the bow of your boat, and one hundred feet from the bow of your boat over to the other one? A. Yes, sir.

Q. And then the red light disappeared right away?

A. Yes, sir.

Q. Now, you saw the red light as you were drawing back from the Strathalbyn? A. Yes.

Q. Out of the wreckage? A. Yes, sir.

Q. Which way did the Strathalbyn turn, commencing with the point of time that you say you saw the red light go back to Robinson's point? A. How long?

Q. Which way did the Strathalbyn's head turn to swing around? A. It was turning to starboard.

Q. It was turning to starboard?

A. Yes; port the wheel; she was changing position all the time, I suppose to get over under the point it had to do that.

Q. And then which way did you turn?

A. We turned the same.

Q. You swung around to starboard too?

A. Yes; I tried to follow her up.

Q. Captain, do you know the places in between Des Moines and up along that east coast of the sound there? A. Do I know it?

Q. Yes; do you know Buenna and some of those other little places in there?

A. No, sir; I know about where Des Moines is, but

what the names of those places is there is so many new ones. I was into Des Moines once.

Q. Were you heading about into the bight there at Des Moines? A. No, sir.

Q. Right after the collision?

A. No, sir; when I said Desmoines I meant towards that shore, the main land.

Q. Maybe we can get it here if you will look at Des Moines here on this map. (Hands map to witness). Now, this place in here (indicating) is the direction you think you were heading. This is Libellant's Exhibit B. Just tell us, Captain, the general direction you think you were heading?

A. This is Robinson's point. (Indicating).

Q. Yes; just tell us the direction in which you were headed. Here is Pulley point (indicating); here is Robinson's point (indicating); how would you be heading now? A. Heading this way. (indicating)

Q. Give me the direction?

A. Is this Des Moines? (Indicating).

Q. This is Des Moines, yes. (indicating)

A. It would be about somewhere in here in this direction, like that (indicating).

MR. BOGLE: Witness points to Poverty Bay.

Q. Hold your pencil there, Captain. I have marked that: "Virginian heading after collision"; is that right?

A. Well, it is something similar to that.

Q. It might have been a little more to the east?

A. It might have been, but it is somewhere around there.

Q. This is marked on the chart, "Virginian heading after collision", on that line that leads up to it is somewhere around the direction she was heading towards that shore? A. Yes, sir.

Q. Captain, how much was the Virginian drawing forward that night? A. Well I do not know.

Q. She was light then, wasn't she?

A. She was light then.

Q. How much did you say she had aboard? Five thousand tons? A. Two thousand.

Q. Two thousand? A. Yes.

Q. Where was that stowed, do you know?

A. I guess it was all over the ship.

Q. She was down by the stern more than she was by the head?

A. Well, I do not know that; she might have been down by the stern. I really don't know. I do not bother about the draughts on the sound, coming in and going out, and there is lots of times I don't know how much freight is in them either.

Q. Now, Captain, did you watch the Flyer at the time of the collision? A. No.

Q. After you gave the bell full speed astern, how far, from your experience with the Virginian, will she run before her headway perceptibly stops?

A. I never was in her before when I had to back her full speed.

Q. That was the first time.

A. That was the first time, or any of them.

Q. Did you hear anybody sing out from the Strathalbyn at all? A. No, sir.

Q. Immediately after the collision?

A. No; I heard somebody hollering out, but I do not know whether it was from our ship, or even what it was that was said.

Q. You said something, Captain, about this collision occurring between 7:59 and 8 o'clock. Did you take the time then? A. No.

Q. It is pure hearsay?

A. The third mate kept all the time.

Q. It is pure hearsay as far as you know. You don't know of your own knowledge? A. No, sir.

MR. HAYDEN: I move to strike out that part of the testimony, then, on the ground that it is hearsay.

Q. Now, at the time of the collision, you say you think the Virginian was about stopped? A. Yes.

Q. You are not sure that she was stopped, are you?

A. No, sir; I am not sure.

Q. At the time of this accident and just prior thereto, the atmosphere was clear? A. Yes.

Q. So you could see lights clearly. A. Yes, sir.

Q. Now, Captain, coming from Pulley point towards Robinson's point, you are looking, are you not at

the reflection of the lights of Tacoma on the water from the sky, especially when it is overcast?

A. Not from Tacoma; not between Pulley and Robinson's point. I never found it that way.

Q. You never saw the lights? A. No, sir.

Q. Lights of Tacoma? A. No, sir.

Q. Where do you see the lights of Tacoma?

A. You can see the smelter— (interrupted)

Q. I am talking about the glow of the lights in the sky. A. It shows down that way.

Q. Down where?

A. Down close to the smelter, up towards Brown's point.

Q. Where do you first see it coming from Seattle?

A. Between Robinson's point and Brown's point.

Q. Do you not see it between Robinson's point and Pulley? A. No, sir; I never noticed it.

Q. You said the Flyer, Captain, was about one point off your bow when she whistled to the Strathalbyn. Was that off your starboard bow, or your port bow?

A. Starboard bow.

MR. BOGLE: I object to the form of the question. The captain said from a point to a point and a half or thereabouts.

Q. Was this point to a point and a half or thereabouts off your port bow or starboard bow?

A. Starboard bow.

Q. You are a pilot on the waters of Puget Sound, are you not? A. Yes, sir.

Q. For how many years? A. Twenty years.

Q. How many degrees of list do you suppose your vessel took when she came into collision with the Strathalbyn?

A. Very little. It was just noticeable. I could not estimate it. There was just a little bit of a list, hardly noticeable.

Q. Did it jar you on your feet at all?

A. No, sir; she almost hit the dock as hard. She hit 14 once harder.

Q. Were you on her then?

MR. BOGLE: We object to that as incompetent, and ask that it be stricken.

Q. Why I asked was because if you were not on her, I would like to know how she hit harder. I want to know whether you were on her. A. Yes, sir.

Q. Was that before or after this collision?

MR. BOGLE: We object to that as incompetent and immaterial. It has nothing to do with this collision.

A. Well, I do not know whether it was before or after. It was windy.

Q. Did you strike the dock side on? A. Yes.

Q. Side on? A. Side on.

MR. BOGLE: We object to this testimony as incompetent and immaterial. Counsel is trying to inject this into the testimony for the purpose of discrediting this witness.

MR. HAYDEN: That is not the purpose.

MR. BOGLE: What bearing can that have on this collision?

MR. HAYDEN: I asked him about the force of this collision and he said that he struck a dock with more force than he struck on this collision.

A. Well, it seemed more to me.

Q. If it struck side on, it would naturally make a difference?

MR. BOGLE: How would that have any bearing upon this collision?

MR. HAYDEN: We are talking about the force of this collision.

MR. BOGLE: It is not competent with reference to this collision.

MR. HAYDEN: That is all right; you have your objection.

Q. After the collision, did you notice the Flyer coming up to your vessels?

A. Did I notice her coming up towards me?

Q. Yes; did you notice the Flyer?

A. No, sir. I had the megaphone. I was hollering most of the time then.

Q. Who were you hollering to?

A. I was trying to find out. I asked how much damage, and what ship it was or what it was. I had the megaphone all the time then.

Q. You made some explanation that I did not catch

about the length of time you saw the Strathalbyn's mast head light, when she went in under Robinson's point and you left her. Will you tell me how long it would be that you would see her mast head light?

MR. BOGLE: We have no particular objection as to his testifying, but he has told us three or four times as to that.

A. It was just while we were siwnging around Robinson's point. She was inside of the point and we were swinging towards Tacoma, and when we got almost turned around—I do not know whether she was heading towards Tacoma or not, but on the turn there, we could see the mast head light, and that is the only time I seen it.

Q. How far did you pass Robinson's point going up?

A. We were close to Robinson's point; closer I think than I ever was before with a big ship.

Q. About how far was that?

A. Well, it was between a half and a quarter of a mile.

Q. And how far inside of Robinson's point was the Strathalbyn at that time?

A. Well, it seemed to be pretty close up; I thought she was on the beach.

Q. How far from the point?

A. Seemed to be close to the point.

Q. Right on the point?

A. Seemed to be close to the point.

Q. Just inside. A. Just inside of the point.

Q. Captain, how long would be the time between these flickers of this light you mentioned?

A. It would flare up and then go down; then it would flare up and go down again.

Q. How long a time would you say between the time that it was up to the apex of it, until it got down into the hollow or bottom of its movement?

A. A very short time; it would be seconds.

Q. Did you pass any vessels, Captain, when you were just off Robinson's point coming back to Tacoma?

A. I think so; I am not sure now, about, before we got to Robinson's point, when both ships were close to

Robinson's point, I think there was a couple of vessels passed. I forget which vessels they were now.

Q. Captain, you were asked in your examination before Mr. Turner: "Did you see the Flyer's lights all the time ahead of you?"

MR. BOGLE: What page?

MR. HAYDEN: Page 18. Answer, "Yes"; Question, "Then she passed to port?" Answer, "Yes"; Question, "What other lights did you see?" Answer, "That was all"; Question, "Did you see Robinson's light?" Answer, "Yes". Is that what you meant to testify to at that time?

A. I seen the Flyer's lights.

Q. "What other lights did you see?" Answer, "That is all". You did not testify at that time that you saw the lights of the Indianapolis?

A. Well he asked me about the lights. I understood he asked me with reference to the Strathalbyn's and the Flyer's light and the light on Robinson's point. He did not ask me about any other light.

Q. He asked you, "What other lights did you see," and you said, "That is all".

A. That is all I thought he was interested in.

Q. Captain, when you heard the passing whistle of the Strathalbyn, which you thought was for your vessel, did you change your course to go over to the starboard at all? A. No, sir.

Q. You had seen, however, that the Flyer passed this vessel all right to starboard?

A. I did not know whether she passed or not. I did not make out what she whistled for.

Q. You didn't hear the Flyer whistle after this second whistle did you? A. No.

Q. Then, she must have passed her, must she not?

MR. BOGLE: I object to the form of the question.

A. Passed the Strathalbyn?

Q. Yes. A. Yes.

Q. When you did not hear the Flyer respond to the Strathalbyn's second whistle, you were of the opinion at that time that the Flyer had passed a vessel coming towards you, were you not?

MR. BOGLE: We object to the form of the ques-

tion; trying to put the answer in the witness' mouth, and on the further ground that it is not proper cross examination.

MR. HAYDEN: It is to test his memory.

Question read.

A. I do not know how to answer that. When I did not hear the Flyer respond the second time?

Q. Yes. You were then of the opinion that there was a vessel coming towards you?

A. That is why I stopped.

Q. And that the Flyer had passed that vessel?

A. That is why I stopped because I could not see her and make out what it was. That is what caused me to stop, when she had passed and I could not see her. Then I did not know what was up.

Q. Captain, did you see any lights at all in the cabin or the engine room at all on the Strathalbyn?

A. No, sir.

Q. Even after the collision, did you see any?

A. No.

Q. Captain, do you remember this question being asked you at the inspection, page 33: Question: "What I want to get at, Captain, is you could not see this ship at all until you struck her, but after you did strike her, then this white light showed up and after you had lost sight of the red light, still you could keep her in sight for thirty-five minutes. How could you see her after and you could not see her before?" Answer, "Well, I do not know. I cannot account for that." Do you remember answering that question in that way?

A. I do not remember.

Q. Do you think that is the way you answered it?

A. I am not sure how I did answer it. If I answered it in that way, I was thinking his running lights were his signal lights. That is what I had in mind. He asked me about the lights— (interrupted)

Q. He asked how could you keep her in sight for thirty-five minutes when you could not see her before the collision. In other words, he asked you how you could see her after the collision when you could not see her before it, and you said, "Well, I do not know. I

cannot account for that". You won't deny that that was your testimony?

A. Well, I do not remember if I had it in mind then about his side lights and his range lights and his mast head light; those lights is what I—I think he must have put it to me about lights, asked me about lights.

Q. I read you the question, Captain? Go ahead, Mr. Bogle, if you have any questions to ask the captain, while I go over what I have here, and if there is anything I want to ask him further, I will do so later.

REDIRECT EXAMINATION.

MR. BOGLE:

Q. What was your course just prior to and at the time of the collision?

MR. HAYDEN: I object to that, having been gone into on direct and cross examination, and for the further reason that he was not where he could see the course taken by the compass.

A. Southeast, half south.

Q. Did you give that course?

MR. HAYDEN: I object to that as leading and as having been gone into.

A. Yes, sir.

Q. Whom did you give it to? A. Third mate.

Q. Captain, up to the time of the collision you had not changed your course?

MR. HAYDEN: I object to that as leading and as matter that has been already gone over.

A. No, sir.

Q. Captain, how much did the Virginian change her course at the time of the collision? How much was she thrown to port?

MR. HAYDEN: I object to that as having been already gone into on direct and cross examination.

A. He told me—I do not know whether it was three-quarters or a point.

Q. Did the Virginian change her course more than a point? A. She might have.

Q. Now, Captain, referring to Libellant's Exhibit B, to the arrow Mr. Hayden has drawn here and which Mr. Hayden has marked, "Virginian heading after collision". When Mr. Hayden first asked you the course

of the Virginian you pointed on a line to Poverty bay. What did you mean by that?

A. Well, I thought how much we would be off the point.

Q. He asked you what the course of the Virginian was after the collision— (interrupted)

MR. HAYDEN: Just a minute. Let me ask him a question?

MR. BOGLE: Go ahead.

MR. HAYDEN:

Q. Mr. Hayden drew the arrow on there along the pencil that you held, did he not? Didn't I draw the line along there, along the pencil you were holding?

A. Yes, sir.

Q. Was that a fair position of the arrow from the pencil you were holding?

A. It may have been off— (interrupted)

Q. I am talking about the pencil. Didn't I follow your pencil line? A. Yes, sir.

MR. HAYDEN: All right.

MR. BOGLE:

Q. When you first pointed the pencil you pointed it to Poverty bay; Mr. Hayden did not draw the line then? A. No, sir.

Q. He waited until you got the pencil around more eastward, and then drew the line? A. Yes, sir.

MR. HAYDEN: I object to that as insulting and slurring. Mr. Hayden did not touch the pencil.

THE WITNESS: You had your finger on it.

MR. HAYDEN: I had my finger over these marks (indicating), my hand on the chart, like that (indicating).

THE WITNESS: Like this (indicating).

MR. BOGLE: So as to cover up Pulley point and the course. Now, Captain, the position of the Virginian after the collision would not be the course she was steering. As a matter of fact, she was a point off, as she changed at the time of the collision?

MR. HAYDEN: I object to that as leading and cross examining his own witness.

A. This is all after the collision (addressing Mr. Hayden).

MR. HAYDEN: That is what I am talking about.

MR. BOGLE:

Q. Yes; in other words, was the momentum of the Virginian changed at all?

MR. HAYDEN: I object to that as immaterial.

A. No, sir.

Q. So the only change she could have in her course was the change made by the contact of the collision?

MR. HAYDEN: We object to that on the ground that it is leading and on the ground that he is cross examining his own witness; trying to impeach his own witness.

A. Yes, sir; the only change that was made was made from the momentum of the two ships coming together.

Q. You have testified that the change in the course caused by the contact of the collision was about a point?

MR. HAYDEN: Same objection.

A. Yes, sir.

Q. So, if this course was more than which you have drawn roughly, was more than a point off her original course, it is not a correct course?

A. No, sir; it is not a correct course.

Q. Did you mean to draw that as the correct course, or approximately? A. Yes, sir.

Q. The course which I am referring is "Virginian heading after collision", which was written in by Mr. Hayden? A. Yes, sir.

Q. Captain, did you take any particular notice of the Flyer as she was coming up astern of you at Pulley point?

MR. HAYDEN: I object to that on the ground that he is cross examining his own witness.

A. No, sir.

Q. After the Flyer had passed you at Pulley point and was ahead of you, did you take any particular notice of her?

MR. HAYDEN: Same objection.

A. No, sir.

Q. Do you know how fast the Flyer was going?

A. No, sir, I do not.

Q. To your own knowledge.

A. Well, to my own knowledge.

Q. If you know? A. No, sir.

MR. HAYDEN: Ask him what he thinks.

MR. BOGLE: I asked him if he knew, not what he thought.

MR. HAYDEN: What do you think?

MR. BOGLE: Wait a minute; I am asking the witness.

Q. Did you see Captain Green when he came on deck prior to the collision after you had passed Pulley point? A. No, sir.

Q. So, you do not know how long he was on deck before the collision? A. No, sir.

Q. Now, Captain, when you heard the whistle ahead of you, you testified you could not see any lights; that you could not see the outline of the vessel. Could you tell the location of that vessel, or whether it was a vessel? A. No, sir.

Q. Or know anything about her course?

Q. Or know anything about her course?

A. No, sir.

Q. Or know anything about her speed?

A. No, sir.

Q. When you testified that you were in doubt as to her course and speed, what do you mean?

A. The Strathalbyn.

Q. The vessel ahead which was whistling and which turned out to be the Strathalbyn?

A. I did not know anything about it.

Q. Never visible? A. No, sir.

Q. Captain, do you know how many minutes it was before you reached Pulley point, how many minutes you ran after you changed your course before you reached Pulley point? What I am trying to get at is, you changed your course before reaching Pulley point?

A. Yes, sir.

Q. On that changed course, how long did you run before reaching Pulley point?

MR. HAYDEN: I object to that. Cross examining his own witness.

A. I do not know; it was only a couple of lengths

off Pulley point, I just done it more not to get too close to the point.

Q. You do not know how long?

A. No; it was only a couple or three minutes if it was that.

Q. Do you know what distance you covered?

A. No, sir; just pulled her out and pulled her in again, that is all. I thought I would not get too close to the point— (interrupted)

Q. When did you pull her in?

A. When I got abeam of the point, and then set my course for Robinson's point.

Q. Was that course ever changed? A. Never.

Q. After the collision, you said, you saw some lanterns aboard as you followed up after the Strathalbyn. Could you make out the outline of the Strathalbyn?

A. Then?

Q. Yes. A. No.

Q. Do you know whether or not one of those lanterns was at the stern of the Strathalbyn?

A. I do not know what portion of her it was.

Q. You do not know where they were?

A. No, sir; they were moving around the deck.

Q. You did not see any regular stern light?

A. No, sir.

Q. Do you know what the position of the Strathalbyn was at the time you saw the red light, how she was headed right after the collision?

A. Well, it was a little— (interrupted)

Q. Could you see her?

A. I could not see her; just seen the light.

Q. You do not know how she was heading?

A. No, sir. I do not know how she was heading.

Q. After the collision and you were following up the Strathalbyn, do you know whether you were at any time ahead of her beam, prior to the time you passed her at Robinson's point?

A. I do not know whether we were forward of the beam or aft of the beam.

Q. Captain, you do not mean to state that your testimony here as to these whistles is absolutely correct as to the time, etc.?

MR. HAYDEN: I object to that as not proper, cross examining his own witness.

A. No, sir.

Q. Did you take the time on that night when you heard those whistles?

MR. HAYDEN: Same objection, and as leading.

A. No; only from the third mate.

Q. That testimony is given to the best of your recollection at this time? A. Yes.

Q. Did you know, or did you have any means of knowing whether this vessel ahead of you which was whistling to you was in dangerous proximity prior to the time that she gave you the danger signal?

MR. HAYDEN: I object to that as leading.

A. No.

RE-CROSS EXAMINATION.

BY MR. HAYDEN:

Q. What are passing signals for?

A. To tell which side of the ship to pass on.

Q. And they are usually whistled in such a distance as to know of each other's approach?

A. Hailing distance.

Q. The two blowing them then so there will not be danger in meeting? A. Yes, sir.

Q. And when a whistle is not blown there is danger of the ships being in trouble if there is no attention paid to them?

A. You blow your whistles, but you see your lights; you can tell what they are doing by lights.

Q. And when you cannot see their lights, you are in doubt about what they are doing? A. Yes, sir.

Q. And you are especially in doubt after getting a passing whistle if you cannot get the lights?

A. Yes, sir.

Q. Now, Captain, I do not want to be unfair; I want to ask you as a fair question about this arrow Mr. Bogle was asking you about, if you did not yourself place the pencil on that chart?

A. I placed the pencil on the chart. I put it here (indicating) and you put your hand over here (indicating).

Q. Didn't I have my hand here (indicating) ?

A. But then I could shift it over like this (indicating).

Q. I want to ask you if you did not place the pencil on the chart yourself upon that arrow as drawn?

A. I do not know whether I did that or whether you put it there or not.

Q. Didn't you testify that immediately after the collision your vessel was heading in towards Des Moines? A. A little to port.

Q. It swings a little to port when backing?

A. No, sir.

Q. How did she happen to back to port in this instance? A. She was knocked off.

Q. I said back?

A. That would throw her back. If you hit the bow the ship would swing— (interrupted)

Q. Wait a minute. You said she backed to port; she backed straight out of that wreckage to port?

A. Pretty nearly straight out.

Q. Didn't you tell me you were heading generally towards Des Moines immediately after the collision?

A. More than it was towards Robinson's.

Q. Is it not a fact that the arrow headed more towards Des Moines than towards Robinson's?

A. It is in Des Moines (indicating).

Q. It is not in Des Moines, is it?

MR. BOGLE: The captain has testified at to what that arrow shows; it is not a correct course.

MR. HAYDEN:

Q. That arrow is not hitting towards Des Moines?

A. It is not now, no; I do not know as she was headed out as far as that.

Q. There is no question but what she was heading more towards Des Moines than towards Robinson's?

A. Yes, sir.

Q. That is right?

A. No, sir; in the first place she would be a half a mile off this point (indicating). Her regular course coming up would be a half a mile off this point, and a half a mile from here would be like this (indicating). There is about the way the ship was (indicating).

Q. Now, Captain, after the collision, immediately

after the collision, when you saw the red light on the Strathalbyn, your vessel was heading more towards Des Moines than towards Robinson's point, that is what you testify to?

A. You asked me if this was after the collision when we were away from her four hundred feet.

Q. About the mark there; does that arrow show that?

A. No, sir; she would not be so much as that, because she would be only— (interrupted)

Q. Wait a minute. I do not want you to see this figure, because you could talk about a point. What I am talking about was on the land.

A. I am not talking about the land.

Q. I understood you were.

A. I see lots of lights and lots of points—(interrupted)

Q. Didn't you say to me that immediately after the collision, when you drew away from the Strathalbyn, that your vessel was headed more towards Des Moines than it was towards Robinson's point?

A. It would be if she was nearly knocked a point off, that would be a point and a half off the course she was steering.

Q. Certainly; that is right. Do you remember my asking if that did not show the direction—(interrupted)

A. This shows a little more than it really ought to be over towards this main land.

Q. A little more towards the mainland than it ought to be. You want to correct that now, do you?

A. Do you want to put it there?

Q. No. Do you want to correct that now.

A. This is about the course. There is the way we were heading. Our course would be clear of that point. (Indicating.)

Q. Can you put it down there?

(Witness draws line.)

Q. Now, what is that you are drawing there?

A. Now, I have not got it right. Which is which?

MR. HAYDEN: I don't know, but I want you to rub out the line you drew if it is not right. There are a lot of lines on there that have been testified about.

(Witness erases line.)

(Witness draws line.)

Q. Now, what is that.

A. That is the course we ought to steer.

Q. Write that down, "course we ought to steer."

Let Mr. Bogle write it.

MR. BOGLE: Is that your exact course? Is that southeast half south? A. Yes, sir.

MR. BOGLE: So if it is southeast half south it is right? A. Yes, sir.

MR. HAYDEN: Wait a minute. Write down "Virginian's course." (Witness writes.)

Q. All right; now, Captain, please tell me how the Virginian was heading immediately after the collision?

MR. BOGLE: Get your rule.

MR. HAYDEN: That is right; be careful.

(Witness measures with rule.)

A. Well, it would be very nearly about here (indicating).

Q. Mark it on there, please.

(Witness marks.)

A. All the way along?

Q. All the way along.

A. The farther you go the wider it gets.

Q. I do not care; mark what it is. Mark "Virginian after collision".

(Witness writes.)

Q. Write "Virginian" after it.

(Witness writes.)

Q. Now, Captain, what land did you notice ahead of you immediately after the collision?

A. I did not notice any of it. I was not thinking of land or those points on there. I was thinking of the ship.

Q. You were not thinking of land and you were not thinking of points. Then how do you know you were knocked a point off? A. Well, I asked the third mate.

MR. HAYDEN: Then I move to strike out all testimony in regard to being knocked a point off on the ground that it is hearsay.

Q. You say you did not look at the land at all?

A. Yes; I was looking at land, but I was not pay-

ing attention to any particular spot to get a line. I did not take any bearing or anything of that kind.

Q. Captain, you said you could not tell whether it was a vessel or not ahead of you. What did you think it would be when you heard the whistle? A. Didn't know.

Q. What did you think?

A. I could not see anything. Only heard a whistle.

Q. A sound like a steamer's whistle?

A. A sound like a steamer's whistle.

Q. Then, what did you think it was ahead of you?

MR. BOGLE: We object to that as immaterial.

A. Well, I could not see anything; I could not even locate it.

Q. What could you imagine it could be other than a steamer?

A. There is half a dozen things I imagined.

Q. What was it?

A. One was that the Flyer was passing something, and then I knew it could not be that, because she would have blowed to the Flyer. That was my first thought. That is what got me interested so quick to keep a lookout and also the third mate.

Q. What would be blowing to the Flyer?

A. Then, I could not see her lights—(interrupted).

Q. What would be blowing to the Flyer in that manner other than a steamer?

A. Having no lights on her, it could be a small tug boat with a big barge, and the lights—(interrupted)

Q. Would not that be a steamer? A tug boat is a steamer?

A. Yes; but I could not see where her lights were.

Q. A steamer is something propelled by steam?

A. Yes.

Q. And you heard somebody whistle? A steam whistle?

A. Some gasoline boats have a whistle like a steamer.

Q. So it would be either a steamer or a gasoline boat ahead? A. Well, I could not tell what it was.

Q. But you could tell it was a vessel of some kind that was blowing?

A. I knew there was a whistle there, but I did not know what it was.

Q. A whistle would not be blowing from a taxicab out there on the sound?

A. I could not tell what it was.

Q. The Flyer would not be answering a taxicab out there on the sound? A. No, sir.

Q. It must have been a vessel?

A. Yes, sir. It proved to be a vessel.

Q. How do you know you could not see a regular stern light on the Strathalbyn?

A. I do not know what light I seen there.

Q. A stern light is a lantern?

A. It is a regular lamp.

Q. Sticks up there on the stern?

A. It is a regular lamp, made like a mast head light or side light.

Q. They use a lantern for that purpose?

A. No, sir; they do not.

Q. They use a lamp? A. Yes, sir; a regular lamp.

Q. Did you see any such lamp? A. No, sir.

Q. Didn't see any? A. No, sir.

Q. I want to ask you one question. There has been a dirty insinuation put into this record that I changed that pencil.

MR. BOGLE: There has been no such insinuation at all.

Q. After you put that mark down on that chart, that I changed it. A. What?

Q. That I changed that pencil when you put that mark down on that chart?

A. I do not know whether you did or not, whether you put the pencil down and I put my hand on there to straighten it, or whether you did.

Q. When that line was drawn, at the time it was finished, you thought it was satisfactory?

A. I just drew the line—(interrupted)

Q. When that line was drawn, at the time it was finished, you thought it was satisfactory?

A. You put down, "Virginian heading after collision."

Q. You thought it was satisfactory at that time?

A. At that time, but I did not know you were going to put the Virginian in front of it.

RE-DIRECT EXAMINATION.

BY MR. BOGLE:

Q. Is it not a fact, when you first pointed that pencil you pointed it into the course that you have drawn this as on a line with Poverty bay?

A. Yes, but Mr. Hayden put his hand in the way and on the point, so I could not see. Even with those rules (indicating) you cannot draw a course. You have to have a parallel rule.

Q. When you were backing away from the collision, were you paying any particular attention to any point ahead of you? A. No, sir.

Q. How do you know how you were steering?

A. I do not know.

Q. That is just a guess?

A. I took the third mate's word for it. He was standing and looking into the compass all the time.

Q. You took that from somebody else's statement?

A. Yes, sir.

RE-RECROSS EXAMINATION.

MR. HAYDEN: I move to strike out all testimony about that on the ground that it is hearsay.

Q. Captain, after that pencil mark, an arrow, had been put down there, my fingers were taken up off the position of the ships in the center of the chart?

A. Yes, sir.

Q. And it was after they were taken off and after the pencil was removed that you said it was satisfactory?

A. Mr. Hayden, when you put the pencil on that mark, when I tried to put the pencil on that mark, I tried to draw it straight, but the damned pencil would not stay. I had to get a rule.

Q. I am talking about the first mark.

A. The pencil would not do. There was nothing to hold it, you could not, nor could I.

Q. Didn't you hold one end and I the other?

A. Then it slewed around. When I drew the pencil along it slewed around.

Q. After that had been drawn, after the pencil had been taken up, and after all the hands had been taken off, and you looked at it and saw the whole chart, didn't you say that was about the right position, and might be a little one way or the other? Answer that question yes or no. Didn't you? A. Yes, sir.

MR. HAYDEN: That is what I thought you did. That is all I want.

(Filed Jan. 7, 1913.)

FRED A. GARDNER, produced as a witness on behalf of the respondent, claimant and cross-libelant, having been first duly sworn by the United States Commissioner to tell the truth, the whole truth and nothing but the truth, testified as follows:

MR. BOGLE—Q. Mr. Gardner, will you state your full name? A. Fred A. Gardner.

Q. Your age? A. 48.

Q. What is your business, Mr. Gardner? A. Consulting Engineer and Marine Surveyor.

Q. You reside in the City of San Francisco? A. Yes.

Q. How long have you been in that business? A. About five years.

Q. What was your business prior to that time? A. Prior to that I was Engineer in Chief of the Union Iron Works, San Francisco.

Q. And you were engaged in that business for how long? A. I was with the Union Iron Works seven years, I think—7 or 8 years.

Q. Prior to that time what was your business, Mr. Gardner?

A. Immediately prior to that I was connected with the Market Street Railway System in charge of the electric power stations for them. Prior to that I was engaged as a marine surveyor for the Pacific Mail Steamship Company and the O. R. & N. Company, about six years.

Q. In connection with your business, Mr. Gardner, have you had any experience in repairing vessels? A. Well, my experience has been pretty largely along that line ever since 1898 or '99.

Q. At the present time what position do you occupy, Mr. Gardner? A. Well, I am in business for myself as Consulting Engineer and I am Surveyor for Lloyds' Agency here in San Francisco.

Q. In connection with that business, Mr. Gardner, do you make surveys of damages and recommend repairs necessary? A. Yes.

Q. Mr. Gardner, were you aboard the steamship "Strathalbyn" in the harbor of Tacoma in the months of January, February or March, 1912, after she was in collision with the steamer "Virginian"? A. I was aboard of her after her collision with the "Virginian"; just exactly what the date was I could not tell without referring to my records on the subject. It was about the time you mentioned, however.

Q. Do you remember, Mr. Gardner, whether you were aboard the boat before or after she was repaired? A. Both.

Q. Do you remember how many times you were aboard this steamer? A. No, I could not say exactly; a great many times.

Q. What was the occasion of your going aboard the "Strathalbyn"? A. I went aboard the "Strathalbyn" at the request of Messrs. Catton, Bell & Company, Lloyds' Agents in San Francisco, and the owners of the "Virginian", and followed up the repairs on the "Strathalbyn" at the request of the London Salvage Association.

Q. What was the interest of the London Salvage Association in this? A. I really don't know. I merely got this instruction from Catton, Bell & Company.

Q. I understand, Mr. Gardner, that you represented the owners of the "Virginian", or were you representing Lloyds' Agents? A. Representing the Underwriters, as I understood it, on both the "Virginian" and "Strathalbyn". I had instructions, written instructions eventually to co-operate with Captain Logan.

Q. Who is Captain Logan? A. Captain Logan represents the London Salvage Association as a special agent, I understand, in Victoria.

Q. During the times that you were aboard the "Strathalbyn" were you representing either side of this

litigation or either vessel, or were you appearing in the interests of both? A. I understood I was appearing in the interests of both.

Q. For the Underwriters? A. For the Underwriters.

Q. Mr. Gardner, were you aboard the "Strathalbyn" at any time after she was repaired and reloaded or partially reloaded after the collision? A. I was not aboard of her after the repairs were entirely completed. I was aboard her in Tacoma after the major part of the repairs had been completed at Victoria; there were some little items, one of which I believe was a mooring chock, had not been completed, and there were a few men sent over from Victoria to complete these repairs on the forecastle head; there were some other small details on the forecastle head as well that had not been absolutely completed. At that time the vessel was being loaded.

Q. Do you remember the extent of the reloading, how far advanced she was in loading? A. Well, the last time I was aboard of her her deck cargo forward was pretty well all on board; I imagine it was a couple of feet above the forecastle head, approximately that, as near as I can recall at the present time.

Q. That was her forward deck cargo? A. Yes.

Q. Of lumber? A. Yes.

Q. How was that cargo held, Mr. Gardner; that is, how was it loaded on the forward deck and held in position? A. Well, it was loaded on the deck and as it came considerably above the bulwarks stanchions were fitted along the sides to keep it from going overboard.

Q. Stanchions between the rail of the vessel and the cargo? A. Yes.

Q. That is to hold it? A. Yes, extending in that space between the break of the forecastle and the bridge.

Q. Did you notice the location of the sidelights on the "Strathalbyn" or rather the lightscreens on the lower bridge? A. Yes, I requested Captain Gibbs to have a look at it as well.

Q. Did you notice these lights in connection with the cargo stanchions—did you make any observations to determine whether or not those cargo stanchions would

obscure a light placed in the screens on the lower bridge from a point directly ahead in the condition the stanchions were at the time you were aboard? A. It was the position that the stanchions were in relative to the light-screens that attracted my attention, and knowing that Captain Gibbs was interested in the stowage of cargo largely on the Sound, I suggested he come over and take a look at them. I had noticed it, I believe, one or two days before the time that I spoke to him of it, and as the loading was pretty well along I thought he would be interested in seeing it.

Q. Just state, Mr. Gardner, whether or not the position of the stanchions at the time you examined them would obscure the lights? A. Yes.

Q. Placed in the light-screens? A. Yes. That was the reason for calling Captain Gibbs's attention to it.

Q. How did you make this examination,—where were you standing? A. By taking a position on the forecastle head and looking aft and later or prior to that really in looking from the screens themselves forward in the direction of the stanchions.

Q. You did not make any measurements at that time, did you, Mr. Gardner? A. None whatever.

Q. Could you state approximately how many degrees such a light would be obscured or deflected by these stanchions? A. Well, at the time that I was looking at them I was under the impression that the lights would be obscured from a point dead ahead to at least in line with the stanchions; that is, measured from the centerline of the vessel. I am referring particularly to the port side now, where we were looking particularly; that was off shore at the time she was loading; there was nothing else there to obscure the vision, whereas, I believe on the other side they were handling cargo; I would not be sure about that; but we looked on that side particularly—in fact looked at it on both sides.

Q. But could you state approximately how many degrees that light would be deflected, in your opinion? A. I have not thought of it in the light of being deflected; it is more a matter of its being obscured absolutely from right ahead at a point parallel with the center line of

the ship and measured out a distance equivalent to the position of these stanchions; it would possibly be deflected a matter of 10 or 15 degrees; that is a mere conjecture, however. I say what attracted my attention was their being obscured from ahead of the vessel.

Q. Did anyone call your attention to that or request you to make such observations, Mr. Gardner? A. No one requested me to make any such observation. In fact, I don't recall positively whether I heard it discussed before or after examining it myself, but I have heard it discussed from time to time. I would not have had it called to my attention at all had it not been for the uncompleted repairs on the forecastle head.

Q. That is what called you aboard the vessel? A. That is what called me aboard the vessel. I was not aboard for the purpose of looking at the light, with the exception of one occasion that I asked Captain Gibbs to go over with me.

Q. Did you make an examination and survey of the damage to the steamer "Strathalbyn" caused by this collision? A. I did.

Q. Did you make such survey and examination of the damage to the "Virginian"? A. I did.

Q. Will you state in a general way, Mr. Gardner, of what the damages to the "Strathalbyn" consisted?

MR. HAYDEN: I object to that. I do not see any necessity of stating in a general way what the damage consisted of. If he made a survey and report, I think he ought to state all the damages that were found; not in a general way what they were, and leave out part of what he found and include some other part.

MR. BOGLE—Q. Will you state as accurately as you can recall now what the damages to the "Strathalbyn" consisted of? A. Well, her stem was carried away, plating on the port side from the stem back for a distance of 25 or 30 feet torn adrift and crumpled up.

MR. HAYDEN—Q. On what side? A. On the starboard side. This down to about, as near as I can recall it now, the 24-foot line, but I would not be sure of that. The plating on the port side was bent and turned over inboard for 5 or 6 strakes down; the stringer-plates

on the forecastle deck, the upper deck and deck below were more or less damaged; a number of frames on the starboard side were damaged; also some on the port side; the deck-planking on the forecastle head was torn adrift, and the windlass more or less damaged. Some breast-hooks were more or less disturbed. The bulkheads forming the crew's quarters were damaged to some extent.

MR. BOGLE—Q. What was the condition of the plating on the starboard side? A. Well, it was torn adrift and crumpled up and hung out from the ship's side back for a distance of approximately 25 or 30 feet.

Q. Was the plating on the port side bent or crumpled? A. Well, it was badly bent, and as I recall it now some of the plating that was not discovered to be actually fractured at the time of the first survey was later found to be fractured; that is, small fractures; bent more particularly.

Q. In what direction was that bent, Mr. Gardner?
A. Bent to starboard.

Q. From port toward starboard? A. From the port toward starboard to such an extent that the port hawse-pipe was approximately where you would expect to see the starboard hawse-pipe.

Q. It was carried around? A. Carried around.

Q. Did you state that the stem was broken? A. The stem was broken.

Q. At about what point was the stem broken? A. Depending entirely on my memory, as near as I can recall, about the 14-foot mark, somewhere or other there; maybe higher; I would not be positive about it.

Q. Mr. Gardner, I will hand you a photograph which has been offered in evidence heretofore as "Libellant's Exhibit V 3", which is attached to the deposition of Mr. N. C. Erismann, and ask you if that photograph accurately shows the damage, or is an accurate photograph of the damage to the "Strathalbyn" at the time you examined it? A. It gives a very fair idea of the damage to the "Strathalbyn" in my opinion.

Q. I refer you now, Mr. Gardner, to a photograph which has heretofore been offered in evidence as "Claimant's Exhibit 5-6" and attached to the deposition of Mr.